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**PUBLIC SERVICE
COMMISSION**

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR A) Case No. 2013-00199
GENERAL ADJUSTMENT IN RATES)

**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

Volume 2 of 2

FILED: September 30, 2013

ORIGINAL

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**

**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

September 30, 2013

1 **Item 71)** *BREC's response to AG 1-239 (f) only vaguely addresses in a one sentence*
2 *response the reason for changes in Officer payroll costs, although it does not explain for*
3 *which period this change relates to because BREC also did not provide Officer payroll*
4 *costs for each of the current and prior rate case periods requested and did not provide*
5 *information for all employees requested. Address the following:*

6 **a.** *AG Schedule 2 attached to this data request for completion was not used by*
7 *BREC and BREC did not provide any of the requested payroll information*
8 *for Mr. Crocket, Ms. Barron, Mr. Haner, Mr. Williams, Ms. Speed, and all*
9 *other management employees performing some or all duties of prior Officer*
10 *positions - - including Vice Presidents, Presidents, and other high level*
11 *positions which have not filled. Provide this requested payroll information*
12 *for all periods requested and for each payroll component requested.*

13 **b.** *BREC's response did not provide any Officer/employee payroll information*
14 *for the forecasted test period in this rate case (and for other periods*
15 *requested). Provide this information for the Officers/employees listed in*
16 *subpart (a) above.*

17 **c.** *BREC's response to AG 1-239(i) states that no Officer positions remain*
18 *unfilled. Please provide a list of unfilled positions for President, Vice*

Case No. 2013-00199

Response to AG 2-71

Witnesses: Thomas W. Davis (a-c); Counsel (d)

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BIG RIVERS ELECTRIC CORPORATION

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1 *President, and employees which were performing some or all duties of these*
2 *positions, and other high level positions. Provide these payroll costs that*
3 *were included in the base period and forecasted test period of the current*
4 *rate case and the prior rate case, and provide related supporting*
5 *documentation and calculations. Explain when all unfilled positions were*
6 *originally vacated and when they will be filled, and provide documentation*
7 *to show when these positions will be filled.*

8 *d. Explain why BREC did not provide the information requested in this data*
9 *request and related schedules for officers and other employees for each*
10 *specific component (long-term incentives, bonuses, annual pay increases,*
11 *etc.) for each of the periods requested in the prior and current rate case.*

12

13 **Response)** Big Rivers objects that AG 1-239 sought information about officer payroll
14 costs, and Big Rivers provided that information. To the extent this request seeks information
15 that is not maintained in the ordinary course of business, information that is not maintained in
16 the manner requested, or information regarding payroll data for specific non-Officer
17 employees, Big Rivers further objects that this request is overly broad, unduly burdensome,
18 and not reasonably calculated to lead to the discovery of admissible evidence. Big Rivers

**Case No. 2013-00199
Response to AG 2-71**

**Witnesses: Thomas W. Davis (a-c); Counsel (d)
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1 further objects that information pertaining to periods prior to the Unwind transaction are not
2 relevant, and actual calendar year 2010 data is not available as a result of Big Rivers' Oracle
3 transition late that year. Notwithstanding these objections, and without waiving them, Big
4 Rivers responds as follows.

5 a. AG 1-239 sought information about officer payroll; that information was
6 provided. Mr. Crockett, Ms. Barron, Mr. Haner, Mr. Williams, and Ms. Speed
7 are not officers.

8 b. Please see part a, above, and the response to AG 1-239(a).

9 c. At present, there is one unfilled high level position, which is VP System
10 Operations. This position was vacated on September 6, 2013 by David
11 Crockett. The job duties associated with the VP System Operations position
12 are currently being performed by the following employees:

13 Robert W. Berry, Chief Operating Officer

14 Christopher Bradley, Manager Energy Control & Compliance

15 Robert Warren, Manager Engineering

16 Tim Tapp, Manager Transmission System

17 Big Rivers budgets payroll costs using average rates by department rather than
18 by individual employees, therefore the requested costs are not available. It is

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1 not Big Rivers' policy to document expected fill dates for vacant positions,
2 however we anticipate this position will be filled on or before January of
3 2014.

4 d. Please see the objections and the responses to parts a and b, above, as well as
5 the response to AG 1-239(b).

6

7 **Witnesses)** Thomas W. Davis (a-c); Counsel (d)

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1 **Item 72)** *BREC's response to AG 1-239 did not provide payroll information for the*
2 *Officers, rate case witnesses, and for employees performing duties in part for unfilled*
3 *Officer positions for prior periods 2008 to 2010 as requested. However, upon cross-*
4 *examination in Case No. 00535, Mr. Haner admitted that W-2 tax records existed for*
5 *employees for these periods. Provide the W-2 tax records payroll information for all*
6 *current and prior Officers from 2008 to 2010, including Mr. Bailey, Mr. Berry, and Mr.*
7 *Blackburn.*

8
9 **Response)** AG 1-239 did not request information about rate case witnesses, and there are
10 no unfilled officer positions. Big Rivers objects to this request as overly broad and not
11 reasonably calculated to lead to the discovery of admissible evidence to the extent that this
12 request seeks private, personally identifiable information of the referenced individuals.
13 Notwithstanding that objection, and without waiving it, please see the attached documents.
14 The following employee information has been redacted pursuant to 807 KAR 5:001 Section
15 4(10)(a): Social Security Number, date of birth, and federal and state tax ID numbers.
16 Additionally, dollar amounts for elective income deferrals and other personal information
17 have also been redacted to protect employee privacy. Big Rivers reiterates that Mr. Berry did

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1 not join Big Rivers until near the middle of 2009; consequently, there is no 2008 W-2 record
2 for him.

3

4 **Witness)** Thomas W. Davis

Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Form W-2 Wage and Tax Statement 2010		OMB No. 1545-0008		Department of the Treasury - Internal Revenue Service			
Control number 601815		Employer identification number [REDACTED]		COPY B To Be Filed With Employee's FEDERAL Tax Return			
Employer's name, address and zip code Big Rivers Electric Corporation 201 Third Street Henderson KY 42420		Employee's SSN [REDACTED]		1 Wages, tips, other compensation 481872.60	2 Federal income tax withheld [REDACTED]		
		7 Social security tips		3 Social security wages [REDACTED]	4 Social security tax withheld [REDACTED]		
		8 Allocated tips		5 Medicare wages and tips 569650.98	6 Medicare tax withheld [REDACTED]		
Employee's first name and init Mark A		Last Name Bailey		9 Advance EIC payment		10 Dependent care benefits	
		Suffix		11 Nonqualified plans			
		12a C		13 Statutory Employee <input type="checkbox"/>		14 Other	
		12b D		Retirement Plan <input checked="" type="checkbox"/>		14C	
		12c		Third-party sick pay <input type="checkbox"/>		14D	
		12d					
15 State KY	Employer's State ID number [REDACTED]	16 State wages, tips etc. 481872.60	17 State income tax [REDACTED]	18 Local wages, tips etc. [REDACTED]	19 Local income tax [REDACTED]	20 Locality name [REDACTED]	

This information is being furnished to the Internal Revenue Service

Form W-2 Wage and Tax Statement 2010		OMB No. 1545-0008		Department of the Treasury - Internal Revenue Service			
Control number 601815		Employer identification number [REDACTED]		COPY C For Employee's Records (See Notice to Employee on back of Copy B)			
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Employee's first name and init Mark A		Last Name Bailey		9 Advance EIC payment		10 Dependent care benefits	
		Suffix		11 Nonqualified plans			
		12a C		13 Statutory Employee <input type="checkbox"/>		14 Other	
		12b D		Retirement Plan <input checked="" type="checkbox"/>		14C	
		12c		Third-party sick pay <input type="checkbox"/>		14D	
		12d					
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Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Copy B—To Be Filed With Employee's FEDERAL Tax Return.		41-1628061 OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other comp. 378,504.00	2 Federal income tax withheld
	3 Social security wages	4 Social security tax withheld
b Employer ID number (EIN)	5 Medicare wages and tips 445,951.60	6 Medicare tax withheld
c Employer's name, address, and ZIP code BIG RIVERS ELECTRIC CORPORATION 201 THIRD STREET HENDERSON KENTUCKY 42420		
d Control number 90-03274		
e Employee's name, address, and ZIP code MARK ALAN BAILEY		
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans NONE	12a Code See inst. for box 12 C
13 Statutory employee	14 Other	12b Code D
Retirement plan X		12c Code
Third-party sick pay		12d Code
15 State Employer's state ID number KY	16 State wages, tips, etc. 378,504.00	17 State income tax
18 Local wages, tips, etc.	19 Local income tax	20 Locality name
Form W-2 Wage and Tax Statement 2009 Dept. of the Treasury -- IRS This information is being furnished to the Internal Revenue Service.		

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Form W-2 Wage and Tax Statement 2009 Dept. of the Treasury -- IRS		

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Form W-2 Wage and Tax Statement 2009 Dept. of the Treasury -- IRS		

Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Copy B—To Be Filed With Employee's FEDERAL Tax Return.		41-1628061 OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other comp. 281,958.46	2 Federal income tax withheld
Employer ID number (EIN)	3 Social security wages	4 Social security tax withheld
	5 Medicare wages and tips 353,083.32	6 Medicare tax withheld
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15 State Employer's state ID number KY	16 State wages, tips, etc. 281,958.46	17 State income tax
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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury - IRS
This information is being furnished to the Internal Revenue Service.

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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury - IRS

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Copy C—For EMPLOYEE'S RECORDS (See Notice to Employee on the back of Copy B.)		41-1628061 OMB No. 1545-0008
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18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury - IRS
This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty or other sanction may be assessed if you do not file a return.

Copy 2—To Be Filed With Employee's State, City, or Local Income Tax Return.		41-1628061 OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other comp. 281,958.46	2 Federal income tax withheld
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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury - IRS

Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Form W-2 Wage and Tax Statement 2010 OMB No. 1545-0008 Department of the Treasury - Internal Revenue Service

Control number 601685		Employer identification number [REDACTED]		COPY B To Be Filed With Employee's FEDERAL Tax Return				
Employer's name, address and zip code Big Rivers Electric Corporation 201 Third Street Henderson KY 42420		Employee's SSN [REDACTED]		1 Wages, tips, other compensation 297674.21	2 Federal income tax withheld [REDACTED]			
		7 Social security tips		3 Social security wages [REDACTED]	4 Social security tax withheld [REDACTED]			
		8 Allocated tips		5 Medicare wages and tips 316303.07	6 Medicare tax withheld [REDACTED]			
		9 Advance EIC payment		10 Dependent care benefits	11 Nonqualified plans			
Employee's first name and init Charles [REDACTED]		Last Name Blackburn [REDACTED]		Suffix [REDACTED]		12a C	13 Statutory Employee <input type="checkbox"/> Retirement Plan <input checked="" type="checkbox"/> Third-party sick pay <input type="checkbox"/>	14 Other 14B
						12b D		14C
						12c		14D
						12d		
15 State KY	Employer's State ID number [REDACTED]	16 State wages, tips etc. 297674.21	17 State income tax [REDACTED]	18 Local wages, tips etc. [REDACTED]	19 Local income tax [REDACTED]	20 Locality name [REDACTED]		

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Form W-2 Wage and Tax Statement 2010 OMB No. 1545-0008 Department of the Treasury - Internal Revenue Service

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This information is being furnished to the Internal Revenue Service

Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Copy B—To Be Filed With Employee's FEDERAL Tax Return.		41-1628081 OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other comp. 266,067.61	2 Federal income tax withheld
Employer ID number (EIN)	3 Social security wages	4 Social security tax withheld
	5 Medicare wages and tips 283,543.89	6 Medicare tax withheld
c Employer's name, address, and ZIP code BIG RIVERS ELECTRIC CORPORATION 201 THIRD STREET HENDERSON KENTUCKY 42420		
d Control number 16-00976		
e Employee's name, address, and ZIP code CHARLES BLACKBURN		
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans NONE	12a Code See inst. for box 12 C
13 Statutory employee	14 Other	12b Code D
Retirement plan X		12c Code
Third-party sick pay		12d Code
15 State Employer's state ID number KY	16 State wages, tips, etc. 266,067.61	17 State income tax
18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form W-2 Wage and Tax Statement **2009** Dept. of the Treasury -- IRS
This information is being furnished to the Internal Revenue Service.

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Form W-2 Wage and Tax Statement **2009** Dept. of the Treasury -- IRS

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Form W-2 Wage and Tax Statement **2009** Dept. of the Treasury -- IRS

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Form W-2 Wage and Tax Statement **2009** Dept. of the Treasury -- IRS

Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Copy B—To Be Filed With Employee's FEDERAL Tax Return.		41-1628061 OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other comp 218,075.54	2 Federal income tax withheld
b Employer ID number (EIN)	3 Social security wages	4 Social security tax withheld
	5 Medicare wages and tips 233,647.01	6 Medicare tax withheld
c Employer's name, address, and ZIP code		
BIG RIVERS ELECTRIC CORPORATION 201 THIRD STREET HENDERSON KENTUCKY 42420		
d Control number 16-00976		
e Employee's name, address, and ZIP code Suff.		
CHARLES BLACKBURN 307 BITTERSWEET LANE HENDERSON, KY 42420		
7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans NONE	12a Code See inst. for box 12 C
13 Statutory employee	14 Other	12b Code D
Retirement plan X		12c Code
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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury -- IRS
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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury -- IRS

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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury -- IRS
This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if the information is not available and you fail to report.

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Form W-2 Wage and Tax Statement **2008** Dept. of the Treasury -- IRS

Big Rivers Electric Corporation - Case No. 2013-00199 - Attachment for Response to AG 2-72

Form W-2 Wage and Tax Statement 2010 OMB No. 1545-0008 Department of the Treasury - Internal Revenue Service

Control number 601965		Employer identification number [REDACTED]		COPY B To Be Filed With Employee's FEDERAL Tax Return			
Employer's name, address and zip code Big Rivers Electric Corporation 201 Third Street Henderson KY 42420		Employee's SSN [REDACTED]		1 Wages, tips, other compensation 289391.29	2 Federal income tax withheld [REDACTED]		
Employee's first name and init Robert W		Last Name Berry		7 Social security tips [REDACTED]		3 Social security wages [REDACTED]	4 Social security tax withheld [REDACTED]
				8 Allocated tips [REDACTED]		5 Medicare wages and tips 309844.64	6 Medicare tax withheld [REDACTED]
Employee's address and ZIP code [REDACTED]		Suffix [REDACTED]		9 Advance EIC payment [REDACTED]		10 Dependent care benefits [REDACTED]	11 Nonqualified plans [REDACTED]
				12a C [REDACTED]		13 Statutory Employee <input type="checkbox"/>	14 Other 14C [REDACTED]
				12b D [REDACTED]		Retirement Plan <input checked="" type="checkbox"/>	14D [REDACTED]
				12c [REDACTED]		Third-party sick pay <input type="checkbox"/>	
12d [REDACTED]							
15 State KY	Employer's State ID number [REDACTED]	16 State wages, tips etc. 289391.29	17 State income tax [REDACTED]	18 Local wages, tips etc. [REDACTED]	19 Local income tax [REDACTED]	20 Locality name [REDACTED]	

This information is being furnished to the Internal Revenue Service

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This information is being furnished to the Internal Revenue Service

ROBERT W BERRY

[REDACTED]

86258.91

[REDACTED]

86258.91

[REDACTED]

92534.63

BIG RIVERS ELECTRIC CORP.
201 THIRD STREET
HENDERSON KY 42420

92534.63

BIG RIVERS ELECTRIC CORP.
201 THIRD STREET
HENDERSON KY 42420

C

[REDACTED]

C

[REDACTED]

D

[REDACTED]

D

[REDACTED]

UWAY

[REDACTED]

UWAY

[REDACTED]

X

X

ROBERT W BERRY

ROBERT W BERRY

[REDACTED]

86258.91

[REDACTED]

86258.91

[REDACTED]

KY/LOCAL

[REDACTED]

KY/LOCAL

[REDACTED]

86258.91

[REDACTED]

86258.91

[REDACTED]

92534.63

BIG RIVERS ELECTRIC CORP.

92534.63

BIG RIVERS ELECTRIC CORP.

[REDACTED]

C

[REDACTED]

C

[REDACTED]

D

[REDACTED]

[REDACTED]

UWAY

[REDACTED]

UWAY

[REDACTED]

X

X

ROBERT W BERRY

ROBERT W BERRY

[REDACTED]

86258.91

[REDACTED]

86258.91

[REDACTED]

KY/LOCAL

[REDACTED]

KY/LOCAL

[REDACTED]

BIG RIVERS ELECTRIC CORPORATION
APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199

Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013

September 30, 2013

- 1 **Item 73) *Address the following regarding the in-house Regulatory Affairs Manager,***
2 ***who is in part responsible for helping to control rate case expense fees by performing tasks***
3 ***such as ensuring filing compliance and performing document production in-house (Speed***
4 ***Rebuttal testimony in Case No. 00535, p. 8).***
- 5 ***a. Provide the name of the person that fills the Regulatory Affairs Manager***
6 ***position and identify the date this position was filled, otherwise explain***
7 ***when this position was vacated and explain any plans to fill this position.***
- 8 ***b. Provide the amount Regulatory Affairs Manager payroll costs included in***
9 ***the forecasted test period of the current and prior rate case, and explain why***
10 ***these costs should be included in the rate case if the position has not been***
11 ***filled.***
- 12 ***c. Provide the name of the person and position that performs the duties***
13 ***previously performed by the Regulatory Affairs Manager and identify all***
14 ***duties performed along with the written job description for this position.***
- 15 ***d. For the three most recent rate cases, provide a list of all issues of “non-***
16 ***compliance” and examples of “cost-control” measures that were utilized by***
17 ***this position in reviewing rate case expenses of outside professionals, and***

Case No. 2013-00199
Response to AG 2-73

Witnesses: Thomas W. Davis (a & c), Jeffrey R. Williams (b) and DeAnna M. Speed (d)
Page 1 of 3

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**

**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

September 30, 2013

1 *provide copies of all correspondence with related outside professionals*
2 *regarding these matters.*

3

4 **Response)**

5 a. The Regulatory Affairs Manager position is filled by Roger D. Hickman. This
6 position was filled on August 9, 2010.

7 b. Big Rivers budgets payroll costs using average wage rates by department and
8 average burden rates rather than by individual employee.

9 c. All job duties of the Regulatory Affairs Manager are performed by Roger D.
10 Hickman. Please see attachment for a summary of the position and a listing of
11 its essential functions.

12 d. The Regulatory Affairs Manager ensures filing compliance. There have been
13 no issues of non-compliance with the three most recent rate cases. Big Rivers
14 filed all documents in the manner prescribed by the Commission's
15 regulations.

16 The "cost-control" measures regarding review of rate case expenses is
17 not performed by the Regulatory Affairs Manager. Management of rate case
18 costs is described in the Direct Testimony of DeAnna M. Speed in the instant

**Case No. 2013-00199
Response to AG 2-73**

Witnesses: Thomas W. Davis (a & c), Jeffrey R. Williams (b) and DeAnna M. Speed (d)
Page 2 of 3

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
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**Response to the Office of the Attorney General's
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dated September 16, 2013**

September 30, 2013

1 case. Ms. Speed has performed the management of rate case costs since she
2 assumed the role of Director Rates and Budgets in March 2013.

3 Among other responsibilities, the Regulatory Affairs Manager
4 facilitates the document reproduction process for rate case filings. This
5 employee's significant experience in rate making proceedings is a source of
6 in-house guidance to Big Rivers in preparation of discovery responses,
7 testimony, and the general rate case process.

8

9 **Witnesses)** Thomas W. Davis (a & c), Jeffrey R. Williams (b), and DeAnna M. Speed (d)

**Big Rivers Electric Corporation
Case No. 2013-00199**

Attachment for Response to AG 2-73(c)

**BIG RIVERS ELECTRIC CORPORATION
JOB DESCRIPTION
Job Title: Regulatory Affairs Manager**

Job Summary:

Responsible for assisting the Director Rates and Budgets in developing, maintaining, and managing a program that will ensure government, regulatory, and community understanding and support of Big Rivers' projects, goals, etc.

Essential Functions:

Provide administrative support including compilation of regulatory submissions, entering information into tariffs and databases, distribution of regulatory information within the company, and other projects as requested by the Director Regulatory and Government Relations.

Prepare, coordinate and support regulatory submissions.

Provides research and networking to assist in developing corporate strategies.

Assist as Big Rivers' liaison in developing and maintaining good working relationships with regulators.

Assists the Director Regulatory and Government Relations in tracking bills and interacting with legislators, KAEC, NRECA, member cooperatives and other utilities in development of laws and regulations.

Be familiar with Big Rivers' contracts and agreements with others. Be familiar with Big Rivers' regulatory and contractual requirements pertaining to the RUS, KPSC, EPA, FERC and other local, state, and federal agencies as required.

Provide assistance, support, and backup as requested to Director Regulatory and Government Relations in administration of Big Rivers' agreements as well as in dealing with regulatory agencies, legislators, Big Rivers' creditors, Big Rivers' legal counsel, and Big Rivers' consultants.

From a regulatory perspective, analyze impact on company of proposed legislation and regulations.

Responsible for ensuring all documentation and regulatory submissions are prepared to meet regulatory standards. Ensure consistency, completeness, and adherence to standards for all regulatory submissions.

Big River Electric Corporation
Case No. 2013-00199

Attachment for Response to AG 2-73(c)

Regulatory Affairs Manager
MAY 2010
Page 2 of 2

Responsible for preparing all tariffs for submittal to the appropriate regulatory agency.

Performs other work-related duties as assigned.

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**

**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

September 30, 2013

1 **Item 74)** *As a follow-up to the Compensation Study at AG 1-245, address the*
2 *following:*

3 *a. Provide a specific citation to pages in the Confidential Compensation Study*
4 *Attachment which explains, supports, documents, and shows: the amount of*
5 *pay increase of 2.6%; the ten individuals receiving a grade reassignment for*
6 *their position; and all increases in pay levels for Officer positions, Vice*
7 *Present positions, and all BREC rate case witnesses (in this rate case) for*
8 *the FYs 2010, 2011, 2012, the base period, and the forecasted test period.*
9 *Provide all additional supporting documentation and calculations to show*
10 *how BREC payroll increases were determined based on information from*
11 *the compensation studies and surveys.*

12 *b. Provide copies of all compensation studies that justified increases in Officer*
13 *positions and Vice President positions for the periods 2007 through 2009,*
14 *and provide a citation to specific pages in these studies that explained,*
15 *supported, documented, and showed the amount of pay increases*
16 *implemented. Provide all additional supporting documentation and*
17 *calculations to show how BREC payroll increases were determined based on*
18 *information from the compensation studies and surveys.*

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**


**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

September 30, 2013

1 **Response)**

2 a. Big Rivers' annual structure adjustments are based on numerous sources of
3 information, including nationally published survey data, government indices,
4 and any compensation study undertaken in an annual review. On page 9 of its
5 Competitive Market Assessment, Towers Watson observed that Big Rivers'
6 structure was 4.3% below market levels. It recommended that Big Rivers

7 

8 , Big Rivers chose to adjust the structure January 2,
9 2012, by 2.6%, the amount management determined necessary – based on
10 movement in the Consumer Price Index – to prevent an erosion of purchasing
11 power for the non-bargaining employees since the Unwind closing.

12 Consequently, the entire study is supportive, but not determinative.

13 b. Big Rivers objects that this request is overly broad and not reasonably
14 calculated to lead to the discovery of admissible evidence. Notwithstanding
15 these objections, and without waiving them, Big Rivers responds as follows.

16 Please refer to Big Rivers' response to subpart (a), above.

17

18 **Witness)** Thomas W. Davis

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**

**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

September 30, 2013

1 **Item 75)** *Provide a list of all new or pending outside professional firms (legal and*
2 *non-legal) that will be assisting with this rate case and provide copies of contracts and*
3 *engagement letters and documentation supporting rate case and non-rate case related*
4 *costs, along with a description of services to be performed.*

5

6 **Response)** Big Rivers has not engaged new outside professional firms since the last
7 monthly update to PSC 1-54 in the instant case. Big Rivers does not have outside
8 professional firms in pending status since the last monthly update to PSC 1-54 in the instant
9 case. Please refer to PSC 1-54 in the instant case and all subsequent updates for invoices
10 related to each vendor. Please refer to PSC 1-45 for copies of contracts, engagement letters
11 or documentation supporting professional service providers.

12

13 **Witness)** DeAnna M. Speed

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**

**Response to the Office of the Attorney General's
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dated September 16, 2013**

September 30, 2013

1 **Item 76)** *Regarding the response to PSC 1-54, Attachment PSC 1-54b, page 5 of 5,*
2 *provide the specific names of witnesses and services to be provided for amounts provided at*
3 *this schedule.*

4
5 **Response)** Big Rivers engaged Daniel M. Walker as an expert witness in support of
6 TIER benchmarking in this case. Please see the Direct Testimony of Mr. Walker for
7 additional information. Big Rivers also included expenditures in its forecast for expert
8 witnesses/counsel, such as Haynes and Boone or other legal counsel, should it become
9 prudent for Big Rivers to obtain assistance in responding to anticipated data requests. Please
10 see the Direct Testimony of DeAnna M. Speed, page 9 of 11, for additional discussion.

11
12 **Witness)** DeAnna M. Speed

BIG RIVERS ELECTRIC CORPORATION
APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199

Response to the Office of the Attorney General's
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dated September 16, 2013

September 30, 2013

1 **Item 77)** *BREC's response to AG 1-276 states that it will incur MISO capacity*
2 *charges in this rate case which were not incurred in the last rate case. Provide the amount*
3 *of MISO costs by account number and for each month of the base period (show actual and*
4 *forecasted amounts) and the forecasted test period, provide a reconciliation to MISO*
5 *amounts addressed in BREC's response to AG 1-125, and provide copies of contracts,*
6 *invoices, and other documents that support the MISO costs included in the forecasted test*
7 *period.*

8
9 **Response)** All MISO capacity charges in the forecast were removed from the revenue
10 requirement. For MISO capacity charges that were removed from the forecasted test period,
11 by account, please refer to the Application, Tab 47. Also, please refer to direct testimony of
12 Mr. John Wolfram, Exhibit-2 Wolfram for the pro forma adjustment for MISO capacity
13 charges. There are no MISO capacity charges included in the base period.

14
15 **Witness)** Lindsay N. Barron and John Wolfram

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1 **Item 78)** *Regarding BREC's response to AG 1-280, provide the FAC amounts for all*
2 *periods identified in this data request, but show separate amounts for Wilson and*
3 *Coleman.*

4
5 **Response)** The requested information is available in Big Rivers' monthly FAC filings
6 and the dockets for which Big Rivers provided case numbers in response to AG 1-280. The
7 FAC amounts are not separated by plant but instead are calculated for Big Rivers on a
8 comprehensive basis, pursuant to the Commission-approved FAC tariff; "separate amounts"
9 for Wilson and Coleman do not exist.

10

11 **Witness)** John Wolfram

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1 **Item 79)** *Regarding BREC's response to AG 1-281, provide the Environmental*
2 *Surcharge revenue and expense amounts for all periods identified in this data request, but*
3 *show separate amounts for Wilson and Coleman.*

4

5 **Response)** The requested information is available in Big Rivers' monthly ES filings and
6 the dockets for which Big Rivers provided case numbers in response to AG 1-281. The ES
7 amounts are not separated by plant but instead are calculated for Big Rivers on a
8 comprehensive basis, pursuant to the Commission-approved ES tariff; "separate amounts"
9 for Wilson and Coleman do not exist.

10

11 **Witness)** John Wolfram

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1 **Item 80)** *In Docket 2012-00535 Big Rivers provided Coincident Peak forecasts and*
2 *12CP allocations for the Century Hawesville (Century at that time) and the Century Sebree*
3 *(Alcan at that time) smelters in response to AG 1-234. Given that the assumed peak load of*
4 *the Hawesville and Sebree smelters were 482 MW and 368 MW the 12 CP kW-month*
5 *allocators were 5,784,000 and 4,416,000 respectively (peak load multiplied by 12*
6 *month/year and 1000 kW/MW). In response to SC 1-12, Big Rivers has Stated that the July*
7 *1, 2013 MISO rate for transmission service is \$15,586.7989/MW-year and therefore Big*
8 *Rivers would expect to receive \$7,512,837/year from Century Hawesville for a 482 MW*
9 *peak load.*

10 **a.** *Is this correct?*

11 **b.** *Would the corresponding amount for transmission revenue from Century*
12 *Sebree, (Alcan) if operations continue at current levels under an agreement*
13 *similar to the "Century Agreement" (the subject of Case No. 2013-00221),*
14 *be \$5,735,942/year (368 MW at \$15,586.7989/MW-year)?*

15 **c.** *If the answer to b is no, please provide the amount Big Rivers would*
16 *estimate as well as the calculations involved in deriving that amount.*

17 **d.** *Confirm that none of these revenues are included in this filing. If such*
18 *revenues are in fact included, state the amounts.*

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- 1 e. *Confirm the demand allocators listed above are correct based on current*
2 *smelter operations.*
- 3 i. *If not, what are the allocators Big Rivers believes are correct? Please*
4 *provide all assumptions and equations used to derive these*
5 *allocators.*

6

7 **Response)**

8 a. Yes.

9 b. Yes.

10 c. Not applicable.

11 d. Confirmed.

12 e. The demand allocators listed in the request are correct for current operations
13 as long as the peak load of the Hawesville smelter is 482 MW and the peak
14 load of the Sebree smelter is 368 MW.

15 i. Not applicable.

16

17 **Witnesses)** Robert W. Berry, John Wolfram

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1 **Item 81)** *In Docket 2012-00535 Big Rivers provided Coincident Peak forecasts and*
2 *12CP allocations for the Century Hawesville and the Century Sebree smelters in response*
3 *to AG 1-234. Given that the assumed peak load of the Hawesville and Sebree smelters*
4 *were 482 MW and 368 MW, the 12 CP kW-month allocators were 5,784,000 and 4,416,000*
5 *respectively (peak load multiplied by 12 month/year and 1000 kW/MW). Referencing Big*
6 *Rivers' response to PSC 2-33 please provide the following information:*

7 *a. Please verify that Big Rivers agrees with the following table based on the filed*
8 *testimony of Wolfram and the response to PSC 2-33, and if Big Rivers does not*
9 *agree provide any modifications as well as the reason for the modifications:*

10

	Source	Rurals	Industrials	Total
Transmission Revenue Requirement	PSC 2-33	\$25,946,205	\$6,815,997	\$32,762,202
Transmission Revenue Demand Allocators (12CP) in kW-mo	Wolfram-4 page 13 of 14	5,128,900	1,347,348	6,476,248

11

12 *b. Assuming the preceding table is correct, see the following Table assuming*
13 *Century Hawesville and Century Sebree smelters continue to operate at current*
14 *levels. If Big Rivers disagrees with any of the assumed demand allocations in*
15 *the table please provide an explanation and corrections:*

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1

	Source	Century Hawesville	Century Sebree	Rurals	Industrials	Total
Transmission Revenue Requirement	PSC 2-33	\$11,363,262	\$8,675,686	\$10,076,251	\$2,647,004	\$32,762,202
Transmission Revenue Demand Allocators (12CP) in kW-mo	Wolfram-4 page 13 of 14, 2012-00535 AG 1-234, and SC 1-12	5,784,000	4,416,000	5,128,900	1,347,348	16,676,248

2

3

4

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10

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13

14

i. Please explain why Big Rivers' allocations would assume that Century Hawesville and Century Sebree are allocated \$11,363,262 and \$8,675,686, respectively, while under the MISO tariff Century Hawesville and Century Sebree will only pay Big Rivers transmission revenue of \$7,512,837/year and \$5,735,942/year, respectively, under the MISO tariff. Please explain if Big Rivers will recover any of the difference under any other MISO charges to Century Hawesville and Century Sebree.

ii. To the extent that Big Rivers disagrees with the table above, please provide Big Rivers' corrections and calculations of the allocation of transmission revenue among Century Hawesville, Century Sebree, the Rurals and the Industrial customers in a similar format assuming that both smelters would continue to operate under Big Rivers' tariffs.

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1 *iii. Is the difference between revenue generated by MISO transmission charges*
2 *and transmission costs that would have been allocated to the smelters under*
3 *the table above, costs that are stranded by the smelters bypassing Big Rivers*
4 *generation supply?*

5 *c. Please explain why the transmission revenue requirements have increased*
6 *dramatically in the filed case to \$32,762,202 from the amount of \$31,508,389 in*
7 *Case 2012-00535 filed only 6 months earlier. This represents an annual*
8 *increase of about 8%.*

9 *i. Does Big Rivers anticipate transmission revenue requirements will continue*
10 *to increase at this rate?*

11 *ii. Provide Big Rivers anticipated transmission revenue requirements for the*
12 *years 2013 through 2027.*

13

14 **Response)**

15 a. Agreed.

16 b. The values in the table are correct if one assumes that the Century Hawesville and

17 Century Sebree smelters were allocated a portion of Big Rivers' transmission-related

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1 revenue requirement for the fully forecasted test period in this case (which they are
2 not, because of the smelter contract terminations).

3 i. The premise of the question is flawed. Big Rivers' did not propose allocations
4 which assume that Century Hawesville and Century Sebree are allocated
5 \$11,363,262 and \$8,675,686, respectively. These are proposed in the data
6 request, not by Big Rivers. Big Rivers suggests that it is not appropriate to
7 allocate a portion of the transmission-related revenue requirement from the
8 fully forecasted test period in this case to the smelters, because of the
9 termination of the smelter contracts. Under the recently-approved agreement
10 between Big Rivers, Kenergy Corp., and Century Kentucky for the provision
11 of service to the Hawesville smelter, Century Kentucky pays the MISO
12 Schedule 9 NITS rate (currently \$15,586.7989/MW-year) for transmission,
13 and Big Rivers credits the transmission revenues against the SSR costs. There
14 is no such agreement in place at this time for the Sebree smelter. The MISO
15 Schedule 9 NITS rate is not based upon the fully forecasted test period
16 proposed in this filing, but instead is calculated pursuant to Attachment O of
17 the FERC-approved MISO Tariff. Big Rivers does not expect to recover any
18 of the difference between the amounts stated in the question under any other

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1 MISO charges to Century Kentucky; Big Rivers expects to recover its
2 transmission-related revenue requirement via the bundled rates proposed in
3 this proceeding.

4 ii. The calculations in the table are performed without error, but the assumption
5 that both smelters would continue to operate under Big Rivers' tariffs is
6 flawed. The smelter contracts that presumably constitute the "Big Rivers'
7 tariffs" noted in the question will not continue due to the smelter contract
8 terminations. Thus it is not meaningful to calculate any transmission revenues
9 that would have accrued pursuant to those agreements.

10 iii. Big Rivers objects that the word "stranded" is unduly ambiguous as used in
11 this request. Notwithstanding this objection, and without waiving it, Big
12 Rivers states as follows. No.

13 c. Big Rivers objects to the argumentative use of the word "dramatically" in the request.
14 Notwithstanding this objection, and without waiving it, Big Rivers responds as
15 follows. The increase in transmission revenue requirements from Case No. 2012-
16 00535 to the instant case stems from the classification of A&G expenses in the cost of
17 service study, not from an increase in expenditures for transmission-related
18 operations and maintenance. Transmission O&M forecasted for Accounts 560

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1 through 575 actually decreases from Case No. 2012-00535 to the instant case. See
2 Attachment Page 1 of 2, Line 15.

3 In the cost of service study, A&G Expenses (Accounts 920 through 930) are
4 classified as related to production demand, production energy, or transmission
5 demand. The costs are classified according to the subtotal of all non-A&G labor (e.g.
6 labor for production and transmission). The labor allocator values differ between
7 Case No. 2012-00535 and the instant case because of plant layups. The labor costs in
8 Case No. 2012-00535 reflected the idling of one power plant, but the labor costs in
9 the instant case reflect the idling of two power plants. Compared to Case No. 2012-
10 00535, the transmission-related labor decreased slightly but the production-related
11 labor decreased significantly in the instant case. This results in an increase of the
12 transmission labor allocator from 14% to 19%. See Attachment, Page 1 of 2, Line 40.
13 This change results in a greater allocation of Big Rivers' overall A&G costs from
14 Accounts 920 – 930 to the transmission function, which drives the apparent increase
15 in transmission expenses. See Attachment, Page 1 of 2, Line 27.

16 i. No.

17 ii. The requested data is not available. However, CONFIDENTIAL

18 Attachment, Page 2 of 2 provides the projected transmission operation

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1 and maintenance expenses, which are provided in the Big Rivers
2 Financial Model for 2014 - 2028. These values are not technically the
3 “transmission revenue requirement” because they do not include a
4 component for rate of return on rate base or TIER, but the values do
5 reflect the transmission-related expenditures projected by Big Rivers
6 on a prospective basis.

7

8 **Witness)** John Wolfram

Big Rivers Electric Corporation
Case No. 2013-00199

Attachment for Response to AG 2-81(c)
Comparison of COSS Transmission-Related Expenses

<u>Line</u>	<u>Item from Cost of Service Study</u>	Century Rate Case Case No. 2012-00535 Filed 6/24/13 <u>Exhibit Wolfram-3.3</u>	Alcan Rate Case Case No. 2013-00199 Filed 6/28/13 <u>Exhibit Wolfram-3</u>	<u>Variance</u>
1	Transmission Expenses			
2	560 OPERATION SUPERVISION AND ENG	956,020	949,606	(6,413)
3	561 LOAD DISPATCHING	15,949,144	2,064,338	(13,884,805)
4	562 STATION EXPENSES	16,347,782	738,595	(15,609,187)
5	563 OVERHEAD LINE EXPENSES	1,236,070	1,289,642	53,572
6	565 TRANSM OF ELEC BY OTHERS	2,448,000	2,698,514	250,514
7	566 MISC. TRANSMISSION EXPENSES	613,921	620,525	6,604
8	567 RENTS	58,669	60,242	1,573
9	568 MAINTENACE SUPERVISION AND ENG	540,092	532,091	(8,002)
10	569 STRUCTURES	(83,165)	(80,241)	2,925
11	570 MAINT OF STATION EQUIPMENT	1,720,315	1,748,250	27,935
12	571 MAINT OF OVERHEAD LINES	2,310,747	2,439,053	128,307
13	573 MISC PLANT	756,058	813,708	57,651
14	575 MARKET FACIL. MONITORING MISO	1,343,829	961,746	(382,083)
15	Total Transmission Expenses	15,059,590	14,836,071	(223,519)
16				
17	Customer Service Expense Classified at Transmission-Related			
18	908 CUSTOMER ASSISTANCE EXPENSES	172,614	168,407	(4,207)
19	909 INFORMATIONAL AND INSTRUCTIONA	4,176	4,154	(23)
20	913 ADVERTISING EXPENSES	17,889	18,691	802
21	Total Customer Service Expense - Transmission-Related	194,680	191,251	(3,428)
22				
23	Sub-Total Transmission & Cust Service	15,254,270	15,027,323	(226,948)
24				
25	A&G Expense Classified as Transmission-Related ¹	4,029,297	5,407,750	1,378,453
26				
27	Total Transmission-Related Expenses ²	19,283,567	20,435,073	1,151,506
28				
29	Allocators			
30				
31	Labor Costs (Classified)			
32	Production - Demand	18,962,278	13,665,858	(5,296,421)
33	Production - Energy	15,051,830	10,075,449	(4,976,381)
34	Transmission - Demand	5,607,898	5,534,588	(73,310)
35	Total	39,622,006	29,275,895	(10,346,112)
36				
37	Labor Allocator			
38	Production - Demand	48%	47%	-1%
39	Production - Energy	38%	34%	-4%
40	Transmission - Demand	14%	19%	5%
41	Total	100%	100%	0%

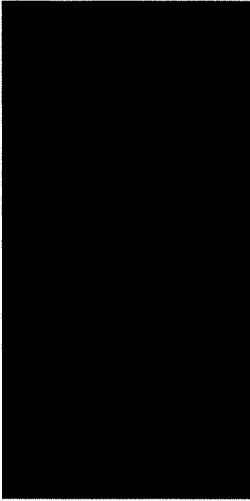
¹ Note this variance does not reconcile with the variance in part (c) of the question because the question relied upon the COSS as filed in Case No. 2012-00535 on Jan. 15, 2013, while this table relies upon the updated COSS filed in that case on June 24, 2013.

² Note this is not the total Transmission "revenue requirement" because it does include a return on rate base or TIER.

Big Rivers Electric Corporation

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**Attachment for Response to AG 2-81(c)
Forecasted Transmission Expenses: Accounts 560 - 575**

<u>Line</u>	<u>Year</u>	<u>Transmission O&M</u>
1	2014	
2	2015	
3	2016	
4	2017	
5	2018	
6	2019	
7	2020	
8	2021	
9	2022	
10	2023	
11	2024	
12	2025	
13	2026	
14	2027	
15	2028	

From Big Rivers Financial Model, Tab 'Trial Bal', Row 522, provided in PSC 1-57

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- 1 **Item 82)** *Reference the company's attachment to its response to KIUC 1-92, pp. 44-*
2 *128 of 156. Explain why BREC had to "...push the Load Recovery from 2016 to 2018"*
3 *(quote on p. 49).*
- 4 *a. Reference p. 54. Explain the nature of the "replacement load" identified*
5 *therein. Why is the nature of the projected load unknown? Explain why a*
6 *75% load factor was assumed. Provide copies of all documents supporting*
7 *these projections and calculations, including workpapers.*
- 8 *b. Reference p. 62. Explain to what extent BREC's load forecast depends on*
9 *projections of: (i) personal income; and (ii) number of households.*
- 10 *c. Provide copies of the sources upon which BREC and/or its consultants*
11 *relied in deriving estimates of personal income and number of households.*
- 12 *d. Reference p. 70. Confirm whether BREC and/or its consultants, in*
13 *developing its load forecasts, utilized the documents relating to price*
14 *elasticity referenced in Mr. Hutts' e-mail dated March 19, 2013. If so,*
15 *explain how they were so utilized. If not, explain why not.*
- 16 *e. Reference p. 128. Explain why BREC's members requested that BREC*
17 *"feather[]" the impact of the two increases over a three year period."*

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1 *f. Reference p. 128. Confirm that BREC’s load forecast utilized in Case No.*
2 *2013-00199 does not take into consideration the loss of residential and*
3 *commercial load that will occur in Jackson Purchase’s service territory due*
4 *to the imminent closing of the Paducah Gaseous Diffusion Plant (“PGDP”)*
5 *[referred to as “USEC” in this document].*

6 *g. Reference p. 44. Confirm that Ms. Barron’s e-mail dated March 18, 2013*
7 *states, in pertinent part: “...The year over year increase shown here...also*
8 *takes into account the year-over-year increases in riders. This is the*
9 *appropriate information to use because it is what the customer will*
10 *experience....”*

11
12 **Response)** The email referenced requested a “push” in load recovery from 2016 to 2018
13 by mistake. There was an internal verbal miscommunication that prompted the email, but the
14 miscommunication was corrected and the projected load replacement remained in 2016 as
15 was originally intended.

16 a. Please see Big Rivers’ response to KIUC 2-32.

17 b. Average household income, computed as total personal income divided by
18 number of households is one of the independent variables included in the

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1 average use per customer models developed for each of Big Rivers' three
2 member distribution cooperatives. Income is positively correlated with
3 energy consumption and is projected to increase over the forecast horizon,
4 resulting in increases in consumption with respect to income. Number of
5 households is the demographic variable included in the forecasting models
6 developed to project the number of rural system customers, which in turn
7 impacts the forecast of total rural system sales.

8 c. The economic data used in developing the load forecast was obtained from
9 Moody's Analytics. The data is provided in the attached, electronic
10 spreadsheet.

11 d. The documents relating to price elasticity and referenced by Mr. Hutts in his
12 email dated March 19, 2013 were not used as direct inputs in development of
13 the load forecast; however, the resulting price elasticity values derived from
14 the regression analysis conducted by GDS Associates were compared to
15 results from the referenced studies as part of the review and evaluation of the
16 estimated price impacts.

17 e. At the time the load forecast was developed, the timing and level of the
18 anticipated rate increases at the member cooperative level were not known; as

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1 a result, the member cooperatives requested that the projected increases be
2 spread over a three year period.

3 f. The base case load forecast does not take into consideration the loss of
4 residential and commercial load that will occur in Jackson Purchase's service
5 territory due to the imminent closing of the Paducah Gaseous Diffusion Plant
6 ("PGDP"). The "pessimistic economy" load forecast scenario, while not
7 specifically addressing the closing of PGDP, considers loss of rural system
8 energy and peak demand due to potential events such as the plant closing.

9 g. Big Rivers disagrees with the use of the words, "pertinent part", as the entire
10 email is pertinent and must be considered for proper context. The email
11 states:

12 Attached are the rates used by GDS for the rural forecast. Please
13 keep in mind, these numbers will NOT align with the rate case
14 increase projections. The rate case increase projections are a
15 comparison of 2014 (with old rates) versus 2014 (with new rates).
16 The year over year increase shown here not only takes into
17 account the rate case increases, but also takes into account the
18 year-over-year increases in riders. This is the appropriate
19 information to use because it is what the customer will
20 experience, but it doesn't match the rate case projections which
21 have been floating around (in the 30-35% range) because the rate
22 case projections do not account for YoverY increases in riders.
23

24 **Witness)** Lindsay N. Barron

Case No. 2013-00199
Response to AG 2-82
Witness: Lindsay N. Barron
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Electronic
Attachment(s)
Produced
Separately

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1 **Item 83)** *Provide the latest load forecast for Jackson Purchase RECC.*

2

3 **Response)** Please see the attached, CONFIDENTIAL document. This document is being
4 provided pursuant to a petition for confidential treatment.

5

6 **Witness)** Lindsay N. Barron

Confidential
Attachment(s)
Produced
Separately

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1 **Item 84)** *Discuss the impact that the loss of the PGDP will have on BREC.*

2 *a. Provide any and all documents discussing any projected or known impacts.*

3

4 **Response)**

5 Neither Big Rivers nor Jackson Purchase serve the PGDP, thus any impact would be
6 limited to reductions in Jackson Purchase's rural or commercial customers' consumption that
7 may occur as a result of the closing.

8

9 **Witness)** Lindsay N. Barron

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1 **Item 85)** *Discuss the impact that the loss of the PGDP will have on Jackson*

2 *Purchase. Include in your discussion loss of other employers who provide(d) services to*

3 *the PGDP, and state whether Jackson Purchase supplied their load, or whether TVA's*

4 *RECCs did.*

5 *a. Provide any and all documents discussing any projected or known impacts.*

6 *b. To the extent known, how many of the employees of PGDP and additional*

7 *employers who provided services to PGDP are served by Jackson Purchase?*

8 *c. Provide copies of any estimates showing the impact of the PGDP's closure*

9 *on commercial establishments, especially after employees who have lost*

10 *their jobs as a result of the facility's closing leave the Jackson Purchase*

11 *service territory.*

12

13 **Response)** Big Rivers objects that this request does not seek data within Big Rivers'

14 possession, custody, or control. Notwithstanding this objection, and without waiving it, Big

15 Rivers responds that it is unable to respond to these questions.

16

17 **Witness)** Lindsay N. Barron

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1 **Item 86)** *Reference the response to KIUC 1-36. Confirm that Century has asked*
2 *BREC to propose a cost reimbursement agreement regarding the Sebree smelter.*

3

4 **Response)** Century has asked BREC to propose a cost reimbursement agreement
5 regarding the Sebree smelter.

6

7 **Witness)** Robert W. Berry

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1 **Item 87)** *Please reference the responses to AG 1-209 (d) and KIUC 1-36. Will the*
2 *company commit to notifying the Commission and the parties if the company should*
3 *receive transmission revenues based on the Century agreements as approved in Case No.*
4 *2013-00221, and/or if BREC should receive any transmission revenues from any potential*
5 *similar agreements pertaining to the operation of the Century-Sebree smelter? If not, why*
6 *not? Explain in complete detail.*

7
8 **Response)** Big Rivers is already committed to provide this information with respect to
9 transmission revenues related to the Century Hawesville smelter. Please refer to the August
10 14, 2013 order of the Commission in Case No. 2013-00221, pages 17 through 19, and
11 ordering paragraph number 5 on page 27. Big Rivers commits to provide the same
12 information to the Commission and the parties in any case in which Big Rivers obtains
13 approval of potentially similar agreements pertaining to the operation of the Century Sebree
14 smelter with respect to transmission revenues received by Big Rivers based on those
15 agreements.

16
17 **Witness)** Robert W. Berry

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1 **Item 88)** *Reference the response to AG 1-190. Provide the document requested, or*
2 *alternatively, explain why Mr. Walker's direct testimony regarding this document should*
3 *not be stricken from the record.*

4

5 **Response)** Mr. Walker was a witness in the proceeding and has direct knowledge of the
6 proceeding and the stated conclusions. As noted in response to AG 1-190, Mr. Walker does
7 not have the document with him at his current location, and it is not reasonably accessible at
8 this time. The document will be provided when it is accessible to Mr. Walker.

9

10 **Witness)** Daniel M. Walker

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1 **Item 89)** *Confirm that BREC's ratepayers, pursuant to the agreement reached and*
2 *approved in Case No. 2013-00221, will remain responsible for depreciation of the Coleman*
3 *plant.*

4
5 **Response)** The Coleman plant depreciation is reflected in the fully-forecasted test period
6 and is included in the base rates as requested in this instant case.

7 Depreciation expense should continue on idled plant based on accounting standards
8 and guidance prescribed by the various authoritative accounting sources and regulatory
9 agencies including the Financial Accounting Standards Board ("FASB"), the United States
10 Code of Federal Regulations ("CFR"), the International Accounting Standards Board
11 ("IASB"), the Internal Revenue Service ("IRS"), and the Rural Utilities Service ("RUS").

12 Big Rivers depreciates its utility plant using the straight-line method of depreciation
13 over the estimated remaining service lives, as approved by the RUS and KPSC. Unless an
14 output-based (i.e. units of production) method of depreciation is used, depreciation expense
15 should continue to be charged on idle property, plant, and equipment that is not abandoned.
16 As the IASB explained in its Basis for Conclusions on IAS 16 – Property, Plant, and
17 Equipment (BC 30-31), "...the useful life of an asset should encompass the entire time it is
18 available for use, regardless of whether during that time it is in use or is idle." Additionally,

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1 the IASB "...concluded that, whether idle or not, it is appropriate to depreciate an asset with
2 a limited useful life so that the financial statements reflect the consumption of the asset's
3 service potential that occurs while the asset is held."

4 The following table provides references to specific authoritative documentation,
5 issued by the various accounting standard-setting bodies listed in the preceding paragraph,
6 which Big Rivers' relied upon in its determination that depreciation expense should continue
7 on property, plant, and equipment while temporarily idled. Copies of the documents
8 referenced within the table below are provided as attachments to this response.

Authoritative Body/ Source	Reference/ Section	Detail
FASB	FASB, Accounting Standards Codification ("ASC") 360-10-35-49 (Property, Plant, and Equipment - Overall - Subsequent Measurement - Long-Lived Asset Temporarily Idled	"A long-lived asset that has been temporarily idled shall not be accounted for as if abandoned." <i>Note: See ASC 360-10-35-1 through 6, included within ASC 360 Property, Plant, and Equipment, Section 10 Overall, Sub-section 35 Subsequent Measurement (provided as an attachment to this response) for discussion on the general concepts of depreciation under FASB ASC.</i>
CFR, Title 7: Agriculture, Part 1767-Accounting Requirements for RUS Electric Borrowers, Subpart B – Uniform System of Accounts ("USoA")	§ 1767.10 Definitions - Service Life	"Service life is the time between the date electric plant is includible in electric plant in service, or electric plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, service life should be measured in terms of the appropriate unit of production."
CFR, Title 7:	§ 1767.15 General	"Utilities must use a method of depreciation that

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<p>Agriculture, Part 1767-Accounting Requirements for RUS Electric Borrowers, Subpart B – USoA</p>	<p>Instructions, (v) Depreciation Accounting, (1) Method</p>	<p><u>allocates</u> in a systematic and rational manner <u>the service value of depreciable property over the service life</u> of the property."</p>
<p>CFR, Title 7: Agriculture, Part 1767-Accounting Requirements for RUS Electric Borrowers, Subpart B – USoA</p>	<p>§1767.18 Assets and Other Debits, 105</p>	<p><u>“105 Electric Plant Held for Future Use</u> A. This account <u>shall include</u> the original cost of <u>electric plant (except land and land rights) owned and held for future use in electric service under a definite plan for such use, to include:</u> (1) Property acquired (except land and land rights) but never used by the utility in electric service, but held for such service in the future under a definite plan, and <u>(2) property (except land and land rights) previously used by the utility in service but retired from such service and held pending its reuse in the future, under a definite plan, in electric service.”</u></p>
<p>CFR, Title 7: Agriculture, Part 1767-Accounting Requirements for RUS Electric Borrowers, Subpart B – USoA</p>	<p>§1767.18 Assets and Other Debits, 105</p>	<p><u>105 Electric Plant Held for Future Use (cont.)</u> “E. The property included in this account shall be classified according to the detail accounts (301 to 399) prescribed for electric plant in service and <u>the account shall be maintained in such detail as though the property were in service.”</u></p>
<p>CFR, Title 7: Agriculture, Part 1767-Accounting Requirements for RUS Electric Borrowers, Subpart B – USoA</p>	<p>§1767.18 Assets and Other Debits, 108</p>	<p>108 Accumulated Provision for Depreciation of Electric Utility Plant A. This account shall be credited with the following:</p>

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		<p>1. Amounts charged to Account 403, Depreciation Expense, or to clearing accounts for current depreciation expense for electric plant in service.</p> <p>2. <u>Amounts charged to Account 421, Miscellaneous Nonoperating Income, for depreciation expense on property included in Account 105, Electric Plant Held for Future Use.</u> Include, also, the balance of accumulated provision for depreciation on property when transferred to Account 105, Electric Plant Held for Future Use, from other property accounts. Normally, Account 108 will not be used for current depreciation provision because, as provided herein, the service life during which depreciation is computed commences with the date property is includible in electric plant in service; however, if special circumstances indicate the propriety of current accruals for depreciation, such charges shall be made to Account 421, Miscellaneous Nonoperating Income.</p>
IASB	International Accounting Standards ("IAS") 16 - Property, Plant, and Equipment, § 55	"Depreciation of an asset begins when it is available for use (i.e. when it is in the location and condition necessary for it to be capable of operating in the manner intended by management). Depreciation of an asset ceases at the earlier of the date that the asset is classified as held for sale (or included in a

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		disposal group that is classified as held for sale) in accordance with IFRS 5 and the date that the asset is derecognized. Therefore, <u>depreciation does not cease when the asset becomes idle or is retired from active use unless the asset is fully depreciated.</u> However, under usage methods of depreciation the depreciation charge can be zero while there is no production."
IASB	IAS 16 - Property, Plant, and Equipment, § 56	"The future economic benefits embodied in an asset are consumed by an entity principally through its use. However, <u>other factors, such as technical or commercial obsolescence and wear and tear while an asset remains idle, often result in the diminution of the economic benefits that might have been obtained from the asset.</u> Consequently, all the following factors are considered in determining the useful life of an asset: (a) expected usage of the asset. Usage is assessed by reference to the asset's expected capacity or physical output. (b) expected physical wear and tear, which depends on operational factors such as the number of shifts for which the asset is to be used and the repair and maintenance program, and the care and maintenance of the asset while idle. (c) technical or commercial obsolescence arising from changes or improvements in production, or from a change in the market demand for the product or service output of the asset. (d) legal or similar limits on the use of the asset, such as the expiry dates of related leases"
IASB	IAS 16 - Property, Plant, and Equipment, Basis for	"The Board decided that the <u>useful life of an asset should encompass the entire time it is available</u>

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	<p>Conclusions on IAS 16, Depreciation Period, BC30 <i>Note: Basis for Conclusions accompanies, but is not part of, IAS 16</i></p>	<p><u>for use, regardless of whether during that time it is in use or is idle.</u> Idle periods most commonly occur just after an asset is acquired and just before it is disposed of, the latter while the asset is held either for sale or for another form of disposal."</p>
IASB	<p>IAS 16 - Property, Plant, and Equipment, Basis for Conclusions on IAS 16, Depreciation Period, BC31 <i>Note: Basis for Conclusions accompanies, but is not part of, IAS 16</i></p>	<p>"The Board concluded that, <u>whether idle or not, it is appropriate to depreciate an asset with a limited useful life</u> so that the financial statements reflect the consumption of the asset's service potential that occurs while the asset is held. The Board also discussed but decided not to address the measurement of assets held for sale. The Board concluded that whether to apply a different measurement model to assets held for sale—which may or may not be idle—was a different question and was beyond the scope of the Improvements project."</p>
IRS	<p>IRS Publication 946 "How to Depreciate Property" (2012), p. 7</p>	<p><u>"Continue to claim a deduction for depreciation on property used in your business or for the production of income even if it is temporarily idle (not in use). For example, if you stop using a machine because there is a temporary lack of a market for a product made with that machine, continue to deduct depreciation on the machine."</u></p>
Amended and Consolidated Loan Contract dated July 16, 2009 between Big Rivers Electric Corporation and the United States of America, acting by	<p>Article IV. - Affirmative Covenants - § 4.22 - Depreciation Plan</p>	<p>"The Borrower shall <u>adopt as its depreciation rates only those that have been previously approved for the Borrower by RUS</u> (through RUS Regulation or by specific approval by RUS). The <u>Borrower shall not file with or submit for approval of any regulatory bodies depreciation rates which are inconsistent with those approved for the Borrower by RUS.</u>"</p>

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and through the Administrator of the Rural Utilities Service ("RUS")		
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1

2 **Witness)** Billie J. Richert

Electronic
Attachment(s)
Produced
Separately

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COMBINED DOC

International Accounting Standard 16

Property, Plant and Equipment

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In April 2001 the International Accounting Standards Board (IASB) adopted IAS 16 *Property, Plant and Equipment*, which had originally been issued by the International Accounting Standards Committee in December 1993. IAS 16 *Property, Plant and Equipment* replaced IAS 16 *Accounting for Property, Plant and Equipment* (issued in March 1982). IAS 16 that was issued in March 1982 also replaced some parts in IAS 4 *Depreciation Accounting* that was approved in November 1975.

In December 2003 the IASB issued a revised IAS 16 as part of its initial agenda of technical projects. The revised standard also replaced the guidance in three Interpretations (SIC-6 *Costs of Modifying Existing Software*, SIC-14 *Property, Plant and Equipment—Compensation for the Impairment or Loss of Items* and SIC-23 *Property, Plant and Equipment—Major Inspection or Overhaul Costs*).

Other IFRSs have made minor consequential amendments to IAS 16. They include IFRS 3 *Business Combinations* (issued March 2004 and as revised in January 2008), IFRS 5 *Non-Current Assets Held for Sale and Discontinued Operations* (issued March 2004), IAS 1 *Presentation of Financial Statements* (as revised in September 2007), *Improvements to IFRSs* (issued May 2008), IFRS 9 *Financial Instruments* (issued November 2009) and October 2010) and IFRS 13 *Fair Value Measurement* (issued May 2011).

International Accounting Standard 16 *Property, Plant and Equipment* (IAS 16) is set out in paragraphs 1-83 and the Appendix. All the paragraphs have equal authority but retain the IASC format of the Standard when it was adopted by

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the IASB. IAS 16 should be read in the context of its objective and the Basis for Conclusions, the *Preface to International Financial Reporting Standards* and the *Conceptual Framework for Financial Reporting*. IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* provides a basis for selecting and applying accounting policies in the absence of explicit guidance.

Introduction

IN1 International Accounting Standard 16 *Property, Plant and Equipment* (IAS 16) replaces IAS 16 *Property, Plant and Equipment* (revised in 1998), and should be applied for annual periods beginning on or after 1 January 2005. Earlier application is encouraged. The Standard also replaces the following Interpretations:

- SIC-6 *Costs of Modifying Existing Software*
- SIC-14 *Property, Plant and Equipment—Compensation for the Impairment or Loss of Items*
- SIC-23 *Property, Plant and Equipment—Major Inspection or Overhaul Costs*

Reasons for Revising IAS 16

IN2 The International Accounting Standards Board developed this revised IAS 16 as part of its project on Improvements to International Accounting Standards. The project was undertaken in the light of queries and criticisms raised in relation to the Standards by securities regulators, professional accountants and other interested parties. The objectives of the project were to reduce or eliminate alternatives, redundancies and conflicts within the Standards, to deal with some convergence issues and to make other improvements.

IN3 For IAS 16 the Board's main objective was a limited revision to provide additional guidance and clarification on selected matters. The Board did not reconsider the fundamental approach to the accounting for property, plant and equipment contained in IAS 16.

The Main Changes

IN4 The main changes from the previous version of IAS 16 are described below.

Scope

IN5 This Standard clarifies that an entity is required to apply the principles of this Standard to items of property, plant and equipment used to develop or maintain (a) biological assets and (b) mineral rights and mineral reserves such as oil, natural gas and similar non-regenerative resources.

Recognition—Subsequent Costs

IN6 An entity evaluates under the general recognition principle all property, plant and equipment costs at the time they are incurred. Those costs include costs incurred initially to acquire or construct an item of property, plant and equipment and costs incurred subsequently to add to, replace part of, or service an item. The previous version of IAS 16 contained two recognition principles. An entity applied the second recognition principle to subsequent costs.

Measurement at Recognition—Asset Dismantlement, Removal and Restoration Costs

IN7 The cost of an item of property, plant and equipment includes the costs of its dismantlement, removal or restoration, the obligation for which an entity incurs as a consequence of installing the item. Its cost also includes the costs of its dismantlement, removal or restoration, the obligation for which an entity incurs as a consequence of using the item during

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a particular period for purposes other than to produce inventories during that period. The previous version of IAS 16 included within its scope only the costs incurred as a consequence of installing the item.

Measurement at Recognition—Asset Exchange Transactions

IN8 An entity is required to measure an item of property, plant and equipment acquired in exchange for a non-monetary asset or assets, or a combination of monetary and non-monetary assets, at fair value unless the exchange transaction lacks commercial substance. Under the previous version of IAS 16, an entity measured such an acquired asset at fair value unless the exchanged assets were similar.

Measurement after Recognition—Revaluation Model

IN9 If fair value can be measured reliably, an entity may carry all items of property, plant and equipment of a class at a revalued amount, which is the fair value of the items at the date of the revaluation less any subsequent accumulated depreciation and accumulated impairment losses. Under the previous version of IAS 16, use of revalued amounts did not depend on whether fair values were reliably measurable.

Depreciation—Unit of Measure

IN10 An entity is required to determine the depreciation charge separately for each significant part of an item of property, plant and equipment. The previous version of IAS 16 did not as clearly set out this requirement.

Depreciation—Depreciable Amount

IN11 An entity is required to measure the residual value of an item of property, plant and equipment as the amount it estimates it would receive currently for the asset if the asset were already of the age and in the condition expected at the end of its useful life. The previous version of IAS 16 did not specify whether the residual value was to be this amount or the amount, inclusive of the effects of inflation, that an entity expected to receive in the future on the asset's actual retirement date.

Depreciation—Depreciation Period

IN12 An entity is required to begin depreciating an item of property, plant and equipment when it is available for use and to continue depreciating it until it is derecognised, even if during that period the item is idle. The previous version of IAS 16 did not specify when depreciation of an item began and specified that an entity should cease depreciating an item that it had retired from active use and was holding for disposal.

Derecognition—Derecognition Date

IN13 An entity is required to derecognise the carrying amount of an item of property, plant and equipment that it disposes of on the date the criteria for the sale of goods in IAS 18 *Revenue* would be met. The previous version of IAS 16 did not require an entity to use those criteria to determine the date on which it derecognised the carrying amount of a disposed-of item of property, plant and equipment.

IN14 An entity is required to derecognise the carrying amount of a part of an item of property, plant and equipment if that part has been replaced and the entity has included the cost of the replacement in the carrying amount of the item. The previous version of IAS 16 did not extend its derecognition principle to such parts; rather, its recognition principle for subsequent expenditures effectively precluded the cost of a replacement from being included in the carrying amount of the item.

Derecognition—Gain Classification

IN15 An entity cannot classify as revenue a gain it realises on the disposal of an item of property, plant and equipment. The previous version of IAS 16 did not contain this provision.

Objective

1 The objective of this Standard is to prescribe the accounting treatment for property, plant and equipment so that users of the financial statements can discern information about an entity's investment in its property, plant and equipment and the

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changes in such investment. The principal issues in accounting for property, plant and equipment are the recognition of the assets, the determination of their carrying amounts and the depreciation charges and impairment losses to be recognised in relation to them.

Scope

2 This Standard shall be applied in accounting for property, plant and equipment except when another Standard requires or permits a different accounting treatment.

3 This Standard does not apply to:

- (a) property, plant and equipment classified as held for sale in accordance with IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*;
- (b) biological assets related to agricultural activity (see IAS 41 *Agriculture*);
- (c) the recognition and measurement of exploration and evaluation assets (see IFRS 6 *Exploration for and Evaluation of Mineral Resources*); or
- (d) mineral rights and mineral reserves such as oil, natural gas and similar non-regenerative resources.

However, this Standard applies to property, plant and equipment used to develop or maintain the assets described in (b)–(d).

4 Other Standards may require recognition of an item of property, plant and equipment based on an approach different from that in this Standard. For example, IAS 17 *Leases* requires an entity to evaluate its recognition of an item of leased property, plant and equipment on the basis of the transfer of risks and rewards. However, in such cases other aspects of the accounting treatment for these assets, including depreciation, are prescribed by this Standard.

5 An entity using the cost model for investment property in accordance with IAS 40 *Investment Property* shall use the cost model in this Standard.

Definitions

6 The following terms are used in this Standard with the meanings specified:

***Carrying amount* is the amount at which an asset is recognised after deducting any accumulated depreciation and accumulated impairment losses.**

***Cost* is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the specific requirements of other IFRSs, eg IFRS 2 *Share-based Payment*.**

***Depreciable amount* is the cost of an asset, or other amount substituted for cost, less its residual value.**

***Depreciation* is the systematic allocation of the depreciable amount of an asset over its useful life.**

***Entity-specific value* is the present value of the cash flows an entity expects to arise from the continuing use of an asset and from its disposal at the end of its useful life or expects to incur when settling a liability.**

***Fair value* is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. (See IFRS 13 *Fair Value Measurement*.)**

***An impairment loss* is the amount by which the carrying amount of an asset exceeds its recoverable amount.**

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Property, plant and equipment are tangible items that:

(a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and

(b) are expected to be used during more than one period.

Recoverable amount is the higher of an asset's fair value less costs to sell and its value in use.

The residual value of an asset is the estimated amount that an entity would currently obtain from disposal of the asset, after deducting the estimated costs of disposal, if the asset were already of the age and in the condition expected at the end of its useful life.

Useful life is:

(a) the period over which an asset is expected to be available for use by an entity; or

(b) the number of production or similar units expected to be obtained from the asset by an entity.

Recognition

7 The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

(a) it is probable that future economic benefits associated with the item will flow to the entity; and

(b) the cost of the item can be measured reliably.

8 Items such as spare parts, stand-by equipment and servicing equipment are recognised in accordance with this IFRS when they meet the definition of property, plant and equipment. Otherwise, such items are classified as inventory.

9 This Standard does not prescribe the unit of measure for recognition, ie what constitutes an item of property, plant and equipment. Thus, judgement is required in applying the recognition criteria to an entity's specific circumstances. It may be appropriate to aggregate individually insignificant items, such as moulds, tools and dies, and to apply the criteria to the aggregate value.

10 An entity evaluates under this recognition principle all its property, plant and equipment costs at the time they are incurred. These costs include costs incurred initially to acquire or construct an item of property, plant and equipment and costs incurred subsequently to add to, replace part of, or service it.

Initial Costs

11 Items of property, plant and equipment may be acquired for safety or environmental reasons. The acquisition of such property, plant and equipment, although not directly increasing the future economic benefits of any particular existing item of property, plant and equipment, may be necessary for an entity to obtain the future economic benefits from its other assets. Such items of property, plant and equipment qualify for recognition as assets because they enable an entity to derive future economic benefits from related assets in excess of what could be derived had those items not been acquired. For example, a chemical manufacturer may install new chemical handling processes to comply with environmental requirements for the production and storage of dangerous chemicals; related plant enhancements are recognised as an asset because without them the entity is unable to manufacture and sell chemicals. However, the resulting carrying amount of such an asset and related assets is reviewed for impairment in accordance with IAS 36 *Impairment of Assets*.

Subsequent Costs

12 Under the recognition principle in paragraph 7, an entity does not recognise in the carrying amount of an item of property, plant and equipment the costs of the day-to-day servicing of the item. Rather, these costs are recognised in profit or loss as incurred. Costs of day-to-day servicing are primarily the costs of labour and consumables, and may include the

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cost of small parts. The purpose of these expenditures is often described as for the 'repairs and maintenance' of the item of property, plant and equipment.

13 Parts of some items of property, plant and equipment may require replacement at regular intervals. For example, a furnace may require relining after a specified number of hours of use, or aircraft interiors such as seats and galleys may require replacement several times during the life of the airframe. Items of property, plant and equipment may also be acquired to make a less frequently recurring replacement, such as replacing the interior walls of a building, or to make a nonrecurring replacement. Under the recognition principle in paragraph 7, an entity recognises in the carrying amount of an item of property, plant and equipment the cost of replacing part of such an item when that cost is incurred if the recognition criteria are met. The carrying amount of those parts that are replaced is derecognised in accordance with the derecognition provisions of this Standard (see paragraphs 67-72).

14 A condition of continuing to operate an item of property, plant and equipment (for example, an aircraft) may be performing regular major inspections for faults regardless of whether parts of the item are replaced. When each major inspection is performed, its cost is recognised in the carrying amount of the item of property, plant and equipment as a replacement if the recognition criteria are satisfied. Any remaining carrying amount of the cost of the previous inspection (as distinct from physical parts) is derecognised. This occurs regardless of whether the cost of the previous inspection was identified in the transaction in which the item was acquired or constructed. If necessary, the estimated cost of a future similar inspection may be used as an indication of what the cost of the existing inspection component was when the item was acquired or constructed.

Measurement at Recognition

15 An item of property, plant and equipment that qualifies for recognition as an asset shall be measured at its cost.

Elements of Cost

16 The cost of an item of property, plant and equipment comprises:

(a) its purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates.

(b) any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

(c) the initial estimate of the costs of dismantling and removing the item and restoring the site on which it is located, the obligation for which an entity incurs either when the item is acquired or as a consequence of having used the item during a particular period for purposes other than to produce inventories during that period.

17 Examples of directly attributable costs are:

(a) costs of employee benefits (as defined in IAS 19 *Employee Benefits*) arising directly from the construction or acquisition of the item of property, plant and equipment;

(b) costs of site preparation;

(c) initial delivery and handling costs;

(d) installation and assembly costs;

(e) costs of testing whether the asset is functioning properly, after deducting the net proceeds from selling any items produced while bringing the asset to that location and condition (such as samples produced when testing equipment); and

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(f) professional fees.

18 An entity applies IAS 2 *Inventories* ¶ to the costs of obligations for dismantling, removing and restoring the site on which an item is located that are incurred during a particular period as a consequence of having used the item to produce inventories during that period. The obligations for costs accounted for in accordance with IAS 2 or IAS 16 are recognised and measured in accordance with IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* ¶.

19 Examples of costs that are not costs of an item of property, plant and equipment are:

- (a) costs of opening a new facility;
- (b) costs of introducing a new product or service (including costs of advertising and promotional activities);
- (c) costs of conducting business in a new location or with a new class of customer (including costs of staff training); and
- (d) administration and other general overhead costs.

20 Recognition of costs in the carrying amount of an item of property, plant and equipment ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management. Therefore, costs incurred in using or redeploying an item are not included in the carrying amount of that item. For example, the following costs are not included in the carrying amount of an item of property, plant and equipment:

- (a) costs incurred while an item capable of operating in the manner intended by management has yet to be brought into use or is operated at less than full capacity;
- (b) initial operating losses, such as those incurred while demand for the item's output builds up; and
- (c) costs of relocating or reorganising part or all of an entity's operations.

21 Some operations occur in connection with the construction or development of an item of property, plant and equipment, but are not necessary to bring the item to the location and condition necessary for it to be capable of operating in the manner intended by management. These incidental operations may occur before or during the construction or development activities. For example, income may be earned through using a building site as a car park until construction starts. Because incidental operations are not necessary to bring an item to the location and condition necessary for it to be capable of operating in the manner intended by management, the income and related expenses of incidental operations are recognised in profit or loss and included in their respective classifications of income and expense.

22 The cost of a self-constructed asset is determined using the same principles as for an acquired asset. If an entity makes similar assets for sale in the normal course of business, the cost of the asset is usually the same as the cost of constructing an asset for sale (see IAS 2 ¶). Therefore, any internal profits are eliminated in arriving at such costs. Similarly, the cost of abnormal amounts of wasted material, labour, or other resources incurred in self-constructing an asset is not included in the cost of the asset. IAS 23 *Borrowing Costs* ¶ establishes criteria for the recognition of interest as a component of the carrying amount of a self-constructed item of property, plant and equipment.

Measurement of Cost

23 The cost of an item of property, plant and equipment is the cash price equivalent at the recognition date. If payment is deferred beyond normal credit terms, the difference between the cash price equivalent and the total payment is recognised as interest over the period of credit unless such interest is capitalised in accordance with IAS 23.

24 One or more items of property, plant and equipment may be acquired in exchange for a non-monetary asset or assets, or a combination of monetary and non-monetary assets. The following discussion refers simply to an exchange of one non-monetary asset for another, but it also applies to all exchanges described in the preceding sentence. The cost of such an item of property, plant and equipment is measured at fair value unless (a) the exchange transaction lacks commercial

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substance or (b) the fair value of neither the asset received nor the asset given up is reliably measurable. The acquired item is measured in this way even if an entity cannot immediately derecognise the asset given up. If the acquired item is not measured at fair value, its cost is measured at the carrying amount of the asset given up.

25 An entity determines whether an exchange transaction has commercial substance by considering the extent to which its future cash flows are expected to change as a result of the transaction. An exchange transaction has commercial substance if:

(a) the configuration (risk, timing and amount) of the cash flows of the asset received differs from the configuration of the cash flows of the asset transferred; or

(b) the entity-specific value of the portion of the entity's operations affected by the transaction changes as a result of the exchange; and

(c) the difference in (a) or (b) is significant relative to the fair value of the assets exchanged.

For the purpose of determining whether an exchange transaction has commercial substance, the entity-specific value of the portion of the entity's operations affected by the transaction shall reflect post-tax cash flows. The result of these analyses may be clear without an entity having to perform detailed calculations.

26 The fair value of an asset is reliably measurable if (a) the variability in the range of reasonable fair value measurements is not significant for that asset or (b) the probabilities of the various estimates within the range can be reasonably assessed and used when measuring fair value. If an entity is able to measure reliably the fair value of either the asset received or the asset given up, then the fair value of the asset given up is used to measure the cost of the asset received unless the fair value of the asset received is more clearly evident.

27 The cost of an item of property, plant and equipment held by a lessee under a finance lease is determined in accordance with IAS 17 .

28 The carrying amount of an item of property, plant and equipment may be reduced by government grants in accordance with IAS 20 *Accounting for Government Grants and Disclosure of Government Assistance* .

Measurement after Recognition

29 An entity shall choose either the cost model in paragraph 30 or the revaluation model in paragraph 31 as its accounting policy and shall apply that policy to an entire class of property, plant and equipment.

Cost Model

30 After recognition as an asset, an item of property, plant and equipment shall be carried at its cost less any accumulated depreciation and any accumulated impairment losses.

Revaluation Model

31 After recognition as an asset, an item of property, plant and equipment whose fair value can be measured reliably shall be carried at a revalued amount, being its fair value at the date of the revaluation less any subsequent accumulated depreciation and subsequent accumulated impairment losses. Revaluations shall be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period.

32-33 [Deleted]

34 The frequency of revaluations depends upon the changes in fair values of the items of property, plant and equipment being revalued. When the fair value of a revalued asset differs materially from its carrying amount, a further revaluation is required. Some items of property, plant and equipment experience significant and volatile changes in fair value, thus necessitating annual revaluation. Such frequent revaluations are unnecessary for items of property, plant and equipment with only insignificant changes in fair value. Instead, it may be necessary to revalue the item only every three or five


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years.

35 When an item of property, plant and equipment is revalued, any accumulated depreciation at the date of the revaluation is treated in one of the following ways:

- (a) restated proportionately with the change in the gross carrying amount of the asset so that the carrying amount of the asset after revaluation equals its revalued amount. This method is often used when an asset is revalued by means of applying an index to determine its replacement cost (see IFRS 13 .
- (b) eliminated against the gross carrying amount of the asset and the net amount restated to the revalued amount of the asset. This method is often used for buildings.

The amount of the adjustment arising on the restatement or elimination of accumulated depreciation forms part of the increase or decrease in carrying amount that is accounted for in accordance with paragraphs 39 and 40.

36 If an item of property, plant and equipment is revalued, the entire class of property, plant and equipment to which that asset belongs shall be revalued.

37 A class of property, plant and equipment is a grouping of assets of a similar nature and use in an entity's operations. The following are examples of separate classes:

- (a) land;
- (b) land and buildings;
- (c) machinery;
- (d) ships;
- (e) aircraft;
- (f) motor vehicles;
- (g) furniture and fixtures; and
- (h) office equipment.

38 The items within a class of property, plant and equipment are revalued simultaneously to avoid selective revaluation of assets and the reporting of amounts in the financial statements that are a mixture of costs and values as at different dates. However, a class of assets may be revalued on a rolling basis provided revaluation of the class of assets is completed within a short period and provided the revaluations are kept up to date.

39 If an asset's carrying amount is increased as a result of a revaluation, the increase shall be recognised in other comprehensive income and accumulated in equity under the heading of revaluation surplus. However, the increase shall be recognised in profit or loss to the extent that it reverses a revaluation decrease of the same asset previously recognised in profit or loss.

40 If an asset's carrying amount is decreased as a result of a revaluation, the decrease shall be recognised in profit or loss. However, the decrease shall be recognised in other comprehensive income to the extent of any credit balance existing in the revaluation surplus in respect of that asset. The decrease recognised in other comprehensive income reduces the amount accumulated in equity under the heading of revaluation surplus.

41 The revaluation surplus included in equity in respect of an item of property, plant and equipment may be transferred directly to retained earnings when the asset is derecognised. This may involve transferring the whole of the surplus when

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the asset is retired or disposed of. However, some of the surplus may be transferred as the asset is used by an entity. In such a case, the amount of the surplus transferred would be the difference between depreciation based on the revalued carrying amount of the asset and depreciation based on the asset's original cost. Transfers from revaluation surplus to retained earnings are not made through profit or loss.

42 The effects of taxes on income, if any, resulting from the revaluation of property, plant and equipment are recognised and disclosed in accordance with IAS 12 *Income Taxes* [1].

Depreciation

43 Each part of an item of property, plant and equipment with a cost that is significant in relation to the total cost of the item shall be depreciated separately.

44 An entity allocates the amount initially recognised in respect of an item of property, plant and equipment to its significant parts and depreciates separately each such part. For example, it may be appropriate to depreciate separately the airframe and engines of an aircraft, whether owned or subject to a finance lease. Similarly, if an entity acquires property, plant and equipment subject to an operating lease in which it is the lessor, it may be appropriate to depreciate separately amounts reflected in the cost of that item that are attributable to favourable or unfavourable lease terms relative to market terms.

45 A significant part of an item of property, plant and equipment may have a useful life and a depreciation method that are the same as the useful life and the depreciation method of another significant part of that same item. Such parts may be grouped in determining the depreciation charge.

46 To the extent that an entity depreciates separately some parts of an item of property, plant and equipment, it also depreciates separately the remainder of the item. The remainder consists of the parts of the item that are individually not significant. If an entity has varying expectations for these parts, approximation techniques may be necessary to depreciate the remainder in a manner that faithfully represents the consumption pattern and/or useful life of its parts.

47 An entity may choose to depreciate separately the parts of an item that do not have a cost that is significant in relation to the total cost of the item.

48 The depreciation charge for each period shall be recognised in profit or loss unless it is included in the carrying amount of another asset.

49 The depreciation charge for a period is usually recognised in profit or loss. However, sometimes, the future economic benefits embodied in an asset are absorbed in producing other assets. In this case, the depreciation charge constitutes part of the cost of the other asset and is included in its carrying amount. For example, the depreciation of manufacturing plant and equipment is included in the costs of conversion of inventories (see IAS 2 [1]). Similarly, depreciation of property, plant and equipment used for development activities may be included in the cost of an intangible asset recognised in accordance with IAS 38 *Intangible Assets* [1].

Depreciable Amount and Depreciation Period

50 The depreciable amount of an asset shall be allocated on a systematic basis over its useful life.

51 The residual value and the useful life of an asset shall be reviewed at least at each financial year-end and, if expectations differ from previous estimates, the change(s) shall be accounted for as a change in an accounting estimate in accordance with IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* [1].

52 Depreciation is recognised even if the fair value of the asset exceeds its carrying amount, as long as the asset's residual value does not exceed its carrying amount. Repair and maintenance of an asset do not negate the need to depreciate it.

53 The depreciable amount of an asset is determined after deducting its residual value. In practice, the residual value of an asset is often insignificant and therefore immaterial in the calculation of the depreciable amount.

54 The residual value of an asset may increase to an amount equal to or greater than the asset's carrying amount. If it does, the asset's depreciation charge is zero unless and until its residual value subsequently decreases to an amount below the asset's carrying amount.

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55 Depreciation of an asset begins when it is available for use, ie when it is in the location and condition necessary for it to be capable of operating in the manner intended by management. Depreciation of an asset ceases at the earlier of the date that the asset is classified as held for sale (or included in a disposal group that is classified as held for sale) in accordance with IFRS 5 and the date that the asset is derecognised. Therefore, depreciation does not cease when the asset becomes idle or is retired from active use unless the asset is fully depreciated. However, under usage methods of depreciation the depreciation charge can be zero while there is no production.

56 The future economic benefits embodied in an asset are consumed by an entity principally through its use. However, other factors, such as technical or commercial obsolescence and wear and tear while an asset remains idle, often result in the diminution of the economic benefits that might have been obtained from the asset. Consequently, all the following factors are considered in determining the useful life of an asset:

- (a) expected usage of the asset. Usage is assessed by reference to the asset's expected capacity or physical output.
- (b) expected physical wear and tear, which depends on operational factors such as the number of shifts for which the asset is to be used and the repair and maintenance programme, and the care and maintenance of the asset while idle.
- (c) technical or commercial obsolescence arising from changes or improvements in production, or from a change in the market demand for the product or service output of the asset.
- (d) legal or similar limits on the use of the asset, such as the expiry dates of related leases.

57 The useful life of an asset is defined in terms of the asset's expected utility to the entity. The asset management policy of the entity may involve the disposal of assets after a specified time or after consumption of a specified proportion of the future economic benefits embodied in the asset. Therefore, the useful life of an asset may be shorter than its economic life. The estimation of the useful life of the asset is a matter of judgement based on the experience of the entity with similar assets.

58 Land and buildings are separable assets and are accounted for separately, even when they are acquired together. With some exceptions, such as quarries and sites used for landfill, land has an unlimited useful life and therefore is not depreciated. Buildings have a limited useful life and therefore are depreciable assets. An increase in the value of the land on which a building stands does not affect the determination of the depreciable amount of the building.

59 If the cost of land includes the costs of site dismantlement, removal and restoration, that portion of the land asset is depreciated over the period of benefits obtained by incurring those costs. In some cases, the land itself may have a limited useful life, in which case it is depreciated in a manner that reflects the benefits to be derived from it.

Depreciation Method

60 The depreciation method used shall reflect the pattern in which the asset's future economic benefits are expected to be consumed by the entity.

61 The depreciation method applied to an asset shall be reviewed at least at each financial year-end and, if there has been a significant change in the expected pattern of consumption of the future economic benefits embodied in the asset, the method shall be changed to reflect the changed pattern. Such a change shall be accounted for as a change in an accounting estimate in accordance with IAS 8.

62 A variety of depreciation methods can be used to allocate the depreciable amount of an asset on a systematic basis over its useful life. These methods include the straight-line method, the diminishing balance method and the units of production method. Straight-line depreciation results in a constant charge over the useful life if the asset's residual value does not change. The diminishing balance method results in a decreasing charge over the useful life. The units of production method results in a charge based on the expected use or output. The entity selects the method that most closely reflects the expected pattern of consumption of the future economic benefits embodied in the asset. That method is applied consistently from period to period unless there is a change in the expected pattern of consumption of those future economic benefits.

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Impairment

63 To determine whether an item of property, plant and equipment is impaired, an entity applies IAS 36 *Impairment of Assets*. That Standard explains how an entity reviews the carrying amount of its assets, how it determines the recoverable amount of an asset, and when it recognises, or reverses the recognition of, an impairment loss.

64 [Deleted]

Compensation for Impairment

65 Compensation from third parties for items of property, plant and equipment that were impaired, lost or given up shall be included in profit or loss when the compensation becomes receivable.

66 Impairments or losses of items of property, plant and equipment, related claims for or payments of compensation from third parties and any subsequent purchase or construction of replacement assets are separate economic events and are accounted for separately as follows:

- (a) impairments of items of property, plant and equipment are recognised in accordance with IAS 36;
- (b) derecognition of items of property, plant and equipment retired or disposed of is determined in accordance with this Standard;
- (c) compensation from third parties for items of property, plant and equipment that were impaired, lost or given up is included in determining profit or loss when it becomes receivable; and
- (d) the cost of items of property, plant and equipment restored, purchased or constructed as replacements is determined in accordance with this Standard.

Derecognition

67 The carrying amount of an item of property, plant and equipment shall be derecognised:

- (a) on disposal; or
- (b) when no future economic benefits are expected from its use or disposal.

68 The gain or loss arising from the derecognition of an item of property, plant and equipment shall be included in profit or loss when the item is derecognised (unless IAS 17 requires otherwise on a sale and leaseback). Gains shall not be classified as revenue.

68A However, an entity that, in the course of its ordinary activities, routinely sells items of property, plant and equipment that it has held for rental to others shall transfer such assets to inventories at their carrying amount when they cease to be rented and become held for sale. The proceeds from the sale of such assets shall be recognised as revenue in accordance with IAS 18 *Revenue*. IFRS 5 does not apply when assets that are held for sale in the ordinary course of business are transferred to inventories.

69 The disposal of an item of property, plant and equipment may occur in a variety of ways (eg by sale, by entering into a finance lease or by donation). In determining the date of disposal of an item, an entity applies the criteria in IAS 18 for recognising revenue from the sale of goods. IAS 17 applies to disposal by a sale and leaseback.

70 If, under the recognition principle in paragraph 7, an entity recognises in the carrying amount of an item of property, plant and equipment the cost of a replacement for part of the item, then it derecognises the carrying amount of the replaced part regardless of whether the replaced part had been depreciated separately. If it is not practicable for an entity to determine the carrying amount of the replaced part, it may use the cost of the replacement as an indication of what the cost of the replaced part was at the time it was acquired or constructed.

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71 The gain or loss arising from the derecognition of an item of property, plant and equipment shall be determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

72 The consideration receivable on disposal of an item of property, plant and equipment is recognised initially at its fair value. If payment for the item is deferred, the consideration received is recognised initially at the cash price equivalent. The difference between the nominal amount of the consideration and the cash price equivalent is recognised as interest revenue in accordance with IAS 18 reflecting the effective yield on the receivable.

Disclosure

73 The financial statements shall disclose, for each class of property, plant and equipment:

- (a) the measurement bases used for determining the gross carrying amount;**
- (b) the depreciation methods used;**
- (c) the useful lives or the depreciation rates used;**
- (d) the gross carrying amount and the accumulated depreciation (aggregated with accumulated impairment losses) at the beginning and end of the period; and**
- (e) a reconciliation of the carrying amount at the beginning and end of the period showing:**

- (i) additions;**
- (ii) assets classified as held for sale or included in a disposal group classified as held for sale in accordance with IFRS 5 and other disposals;**
- (iii) acquisitions through business combinations;**
- (iv) increases or decreases resulting from revaluations under paragraphs 31, 39 and 40 and from impairment losses recognised or reversed in other comprehensive income in accordance with IAS 36;**
- (v) impairment losses recognised in profit or loss in accordance with IAS 36;**
- (vi) impairment losses reversed in profit or loss in accordance with IAS 36;**
- (vii) depreciation;**
- (viii) the net exchange differences arising on the translation of the financial statements from the functional currency into a different presentation currency, including the translation of a foreign operation into the presentation currency of the reporting entity; and**
- (ix) other changes.**

74 The financial statements shall also disclose:

- (a) the existence and amounts of restrictions on title, and property, plant and equipment pledged as security for**

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liabilities;

(b) the amount of expenditures recognised in the carrying amount of an item of property, plant and equipment in the course of its construction;

(c) the amount of contractual commitments for the acquisition of property, plant and equipment; and

(d) if it is not disclosed separately in the statement of comprehensive income, the amount of compensation from third parties for items of property, plant and equipment that were impaired, lost or given up that is included in profit or loss.

75 Selection of the depreciation method and estimation of the useful life of assets are matters of judgement. Therefore, disclosure of the methods adopted and the estimated useful lives or depreciation rates provides users of financial statements with information that allows them to review the policies selected by management and enables comparisons to be made with other entities. For similar reasons, it is necessary to disclose:

(a) depreciation, whether recognised in profit or loss or as a part of the cost of other assets, during a period; and

(b) accumulated depreciation at the end of the period.

76 In accordance with IAS 8 ^(f) an entity discloses the nature and effect of a change in an accounting estimate that has an effect in the current period or is expected to have an effect in subsequent periods. For property, plant and equipment, such disclosure may arise from changes in estimates with respect to:

(a) residual values;

(b) the estimated costs of dismantling, removing or restoring items of property, plant and equipment;

(c) useful lives; and

(d) depreciation methods.

77 If items of property, plant and equipment are stated at revalued amounts, the following shall be disclosed in addition to the disclosures required by IFRS 13 ^(f):

(a) the effective date of the revaluation;

(b) whether an independent valuer was involved;

(c) [deleted]

(d) [deleted]

(e) for each revalued class of property, plant and equipment, the carrying amount that would have been recognised had the assets been carried under the cost model; and

(f) the revaluation surplus, indicating the change for the period and any restrictions on the distribution of the balance to shareholders.

78 In accordance with IAS 36 ^(f) an entity discloses information on impaired property, plant and equipment in addition to the information required by paragraph 73(e)(iv)-(vi).

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79 Users of financial statements may also find the following information relevant to their needs:

- (a) the carrying amount of temporarily idle property, plant and equipment;
- (b) the gross carrying amount of any fully depreciated property, plant and equipment that is still in use;
- (c) the carrying amount of property, plant and equipment retired from active use and not classified as held for sale in accordance with IFRS 5 ^(c); and
- (d) when the cost model is used, the fair value of property, plant and equipment when this is materially different from the carrying amount.

Therefore, entities are encouraged to disclose these amounts.

Transitional Provisions

80 The requirements of paragraphs 24-26 regarding the initial measurement of an item of property, plant and equipment acquired in an exchange of assets transaction shall be applied prospectively only to future transactions.

Effective Date

81 An entity shall apply this Standard for annual periods beginning on or after 1 January 2005. Earlier application is encouraged. If an entity applies this Standard for a period beginning before 1 January 2005, it shall disclose that fact.

81A An entity shall apply the amendments in paragraph 3 for annual periods beginning on or after 1 January 2006. If an entity applies IFRS 6 ^(a) for an earlier period, those amendments shall be applied for that earlier period.

81B IAS 1 *Presentation of Financial Statements* (as revised in 2007) ^(a) amended the terminology used throughout IFRSs. In addition it amended paragraphs 39, 40 and 73(e)(iv). An entity shall apply those amendments for annual periods beginning on or after 1 January 2009. If an entity applies IAS 1 (revised 2007) for an earlier period, the amendments shall be applied for that earlier period.

81C IFRS 3 *Business Combinations* (as revised in 2008) ^(a) amended paragraph 44. An entity shall apply that amendment for annual periods beginning on or after 1 July 2009. If an entity applies IFRS 3 (revised 2008) for an earlier period, the amendment shall also be applied for that earlier period.

81D Paragraphs 6 and 69 were amended and paragraph 68A was added by *Improvements to IFRSs* issued in May 2008. An entity shall apply those amendments for annual periods beginning on or after 1 January 2009. Earlier application is permitted. If an entity applies the amendments for an earlier period it shall disclose that fact and at the same time apply the related amendments to IAS 7 *Statement of Cash Flows* ^(a).

81E Paragraph 5 was amended by *Improvements to IFRSs* issued in May 2008. An entity shall apply that amendment prospectively for annual periods beginning on or after 1 January 2009. Earlier application is permitted if an entity also applies the amendments to paragraphs 8 ^(a), 9, 22, 48, 53, 53A, 53B, 54, 57 and 85B of IAS 40 at the same time. If an entity applies the amendment for an earlier period it shall disclose that fact.

81F IFRS 13 ^(a), issued in May 2011, amended the definition of fair value in paragraph 6, amended paragraphs 26, 35 and 77 and deleted paragraphs 32 and 33. An entity shall apply those amendments when it applies IFRS 13.

81G *Annual Improvements 2009–2011 Cycle* ^(a), issued in May 2012, amended paragraph 8. An entity shall apply that amendment retrospectively in accordance with IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* ^(a) for annual periods beginning on or after 1 January 2013. Earlier application is permitted. If an entity applies that amendment for an earlier period it shall disclose that fact.

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Withdrawal of Other Pronouncements

82 This Standard supersedes IAS 16 *Property, Plant and Equipment* (revised in 1998).

83 This Standard supersedes the following Interpretations:

- (a) SIC-6 *Costs of Modifying Existing Software*;
- (b) SIC-14 *Property, Plant and Equipment—Compensation for the Impairment or Loss of Items*; and
- (c) SIC-23 *Property, Plant and Equipment—Major Inspection or Overhaul Costs*.

Appendix: Amendments to Other Pronouncements

The amendments in this appendix shall be applied for annual periods beginning on or after 1 January 2005. If an entity applies this Standard for an earlier period, these amendments shall be applied for that earlier period.

* * * * *

The amendments contained in this appendix when this Standard was issued in 2003 have been incorporated into the relevant pronouncements published in this volume.

Approval by the Board of IAS 16 issued in December 2003

International Accounting Standard 16 *Property, Plant and Equipment* (as revised in 2003) was approved for issue by the fourteen members of the International Accounting Standards Board.

Sir David Tweedie	Chairman
Thomas E Jones	Vice-Chairman
Mary E Barth	
Hans-Georg Bruns	
Anthony T Cope	
Robert P Garnett	
Gilbert Gélard	
James J Leisenring	
Warren J McGregor	
Patricia L O'Malley	
Harry K Schmid	
John T Smith	
Geoffrey Whittington	
Tatsumi Yamada	

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Equipment

This Basis for Conclusions accompanies, but is not part of, IAS 16.

Introduction

BC1 This Basis for Conclusions summarises the International Accounting Standards Board's considerations in reaching its conclusions on revising IAS 16 *Property, Plant and Equipment* in 2003. Individual Board members gave greater weight to some factors than to others.

BC2 In July 2001 the Board announced that, as part of its initial agenda of technical projects, it would undertake a project to improve a number of Standards, including IAS 16. The project was undertaken in the light of queries and criticisms raised in relation to the Standards by securities regulators, professional accountants and other interested parties. The objectives of the Improvements project were to reduce or eliminate alternatives, redundancies and conflicts within Standards, to deal with some convergence issues and to make other improvements. In May 2002 the Board published its proposals in an Exposure Draft of *Improvements to International Accounting Standards*, with a comment deadline of 16 September 2002. The Board received over 160 comment letters on the Exposure Draft.

BC3 Because the Board's intention was not to reconsider the fundamental approach to the accounting for property, plant and equipment that was established by IAS 16, this Basis for Conclusions does not discuss requirements in IAS 16 that the Board has not reconsidered.

Scope

BC4 The Board clarified that the requirements of IAS 16 apply to items of property, plant and equipment that an entity uses to develop or maintain (a) biological assets and (b) mineral rights and mineral reserves such as oil, natural gas and similar non-regenerative resources. The Board noted that items of property, plant and equipment that an entity uses for these purposes possess the same characteristics as other items of property, plant and equipment.

Recognition

BC5 In considering potential improvements to the previous version of IAS 16, the Board reviewed its subsequent expenditure recognition principle for two reasons. First, the existing subsequent expenditure recognition principle did not align with the asset recognition principle in the *Framework* [1].* Second, the Board noted difficulties in practice in making the distinction it required between expenditures that maintain, and those that enhance, an item of property, plant and equipment. Some expenditures seem to do both.

* References to the *Framework* are to IASC's *Framework for the Preparation and Presentation of Financial Statements*, adopted by the IASB in 2001. In September 2010 the IASB replaced the *Framework* with the *Conceptual Framework for Financial Reporting* [2].

BC6 The Board ultimately decided that the separate recognition principle for subsequent expenditure was not needed. As a result, an entity will evaluate all its property, plant and equipment costs under IAS 16's general recognition principle. Also, if the cost of a replacement for part of an item of property, plant and equipment is recognised in the carrying amount of an asset, then an entity will derecognise the carrying amount of what was replaced to avoid carrying both the replacement and the replaced portion as assets. This derecognition occurs whether or not what is replaced is a part of an item that the entity depreciates separately.

BC7 The Board's decision on how to handle the recognition principles was not reached easily. In the Exposure Draft (ED), the Board proposed to include within IAS 16's general recognition principle only the recognition of subsequent expenditures that are replacements of a part of an item of property, plant and equipment. Also in the ED, the Board proposed to modify the subsequent expenditure recognition principle to distinguish more clearly the expenditures to which it would continue to apply.

BC8 Respondents to the ED agreed that it was appropriate for subsequent expenditures that were replacements of a part of an item of property, plant and equipment that an entity depreciated separately to be covered by the general recognition principle. However, the respondents argued, and the Board agreed, that the modified second principle was not clearer because it would result in an entity recognising in the carrying amount of an asset and then depreciating subsequent

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expenditures that were for the day-to-day servicing of items of property, plant and equipment, those that might commonly be regarded as for 'repairs and maintenance'. That result was not the Board's intention.

BC9 In its redeliberation of the ED, the Board concluded it could not retain the proposed modified subsequent expenditure recognition principle. It also concluded that it could not revert to the subsequent expenditure principle in the previous version of IAS 16 because, if it did, nothing was improved; the *Framework* conflict was not resolved and the practice issues were not addressed.

BC10 The Board concluded that it was best for all subsequent expenditures to be covered by IAS 16's general recognition principle. This solution had the following advantages:

- (a) use of IAS 16's general recognition principle fits the *Framework*.
- (b) use of a single recognition principle is a straightforward approach.
- (c) retaining IAS 16's general recognition principle and combining it with the derecognition principle will result in financial statements that reflect what is occurring, ie both the flow of property, plant and equipment through an entity and the economics of the acquisition and disposal process.
- (d) use of one recognition principle fosters consistency. With two principles, consistency is not achieved unless it is clear when each should apply. Because IAS 16 does not address what constitutes an 'item' of property, plant and equipment, this clarity was not assured because some might characterise a particular cost as the initial cost of a new item of property, plant and equipment and others might regard it as a subsequent cost of an existing item of property, plant and equipment.

BC11 As a consequence of placing all subsequent expenditures under IAS 16's general recognition principle, the Board also included those expenditures under IAS 16's derecognition principle. In the ED, the Board proposed the derecognition of the carrying amount of a part of an item that was depreciated separately and was replaced by a subsequent expenditure that an entity recognised in the carrying amount of the asset under the general recognition principle. With this change, replacements of a part of an item that are not depreciated separately are subject to the same approach.

BC12 The Board noted that some subsequent expenditures on property, plant and equipment, although arguably incurred in the pursuit of future economic benefits, are not sufficiently certain to be recognised in the carrying amount of an asset under the general recognition principle. Thus, the Board decided to state in the Standard that an entity recognises in profit or loss as incurred the costs of the day-to-day servicing of property, plant and equipment.

Classification of servicing equipment

BC12A In *Annual Improvements 2009–2011 Cycle* (issued in May 2012) the Board responded to a request to address a perceived inconsistency in the classification requirements for servicing equipment. Paragraph 8 of IAS 16 was unclear on the classification of servicing equipment as inventory or property, plant and equipment and led some to think that servicing equipment used during more than one period would be classified as part of inventory. The Board decided to clarify that items such as spare parts, stand-by equipment and servicing equipment shall be recognised as property, plant and equipment when they meet the definition of property, plant and equipment. If they do not meet this definition they are classified as inventory. In the light of respondents' comments to the June 2011 exposure draft, the Board did not make explicit reference to the classification of particular types of equipment, because the definition of property, plant and equipment already provides sufficient guidance. The Board also deleted from paragraph 8 the requirement to account for spare parts and servicing equipment as property, plant and equipment only if they were used in connection with an item of property, plant and equipment because this requirement was too restrictive when compared with the definition of property, plant and equipment.

Measurement at Recognition

Asset Dismantlement, Removal and Restoration Costs

BC13 The previous version of IAS 16 provided that in initially measuring an item of property, plant and equipment at its cost, an entity would include the cost of dismantling and removing that item and restoring the site on which it is located

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to the extent it had recognised an obligation for that cost. As part of its deliberations, the Board evaluated whether it could improve this guidance by addressing associated issues that have arisen in practice.

BC14 The Board concluded that the relatively limited scope of the Improvements project warranted addressing only one matter. That matter was whether the cost of an item of property, plant and equipment should include the initial estimate of the cost of dismantlement, removal and restoration that an entity incurs as a consequence of using the item (instead of as a consequence of acquiring it). Therefore, the Board did not address how an entity should account for (a) changes in the amount of the initial estimate of a recognised obligation, (b) the effects of accretion of, or changes in interest rates on, a recognised obligation or (c) the cost of obligations an entity did not face when it acquired the item, such as an obligation triggered by a law change enacted after the asset was acquired.

BC15 The Board observed that whether the obligation is incurred upon acquisition of the item or while it is being used, its underlying nature and its association with the asset are the same. Therefore, the Board decided that the cost of an item should include the costs of dismantlement, removal or restoration, the obligation for which an entity has incurred as a consequence of having used the item during a particular period other than to produce inventories during that period. An entity applies IAS 2 *Inventories* ¶ to the costs of these obligations that are incurred as a consequence of having used the item during a particular period to produce inventories during that period. The Board observed that accounting for these costs initially in accordance with IAS 2 acknowledges their nature. Furthermore, doing so achieves the same result as including these costs as an element of the cost of an item of property, plant and equipment, depreciating them over the production period just completed and identifying the depreciation charge as a cost to produce another asset (inventory), in which case the depreciation charge constitutes part of the cost of that other asset.

BC16 The Board noted that because IAS 16's initial measurement provisions are not affected by an entity's subsequent decision to carry an item under the cost model or the revaluation model, the Board's decision applies to assets that an entity carries under either treatment.

Asset Exchange Transactions

BC17 Paragraph 22 ¶ of the previous version of IAS 16 indicated that if (a) an item of property, plant and equipment is acquired in exchange for a similar asset that has a similar use in the same line of business and has a similar fair value or (b) an item of property, plant and equipment is sold in exchange for an equity interest in a similar asset, then no gain or loss is recognised on the transaction. The cost of the new asset is the carrying amount of the asset given up (rather than the fair value of the purchase consideration given for the new asset).

BC18 This requirement in the previous version of IAS 16 was consistent with views that:

- (a) gains should not be recognised on exchanges of assets unless the exchanges represent the culmination of an earning process;
- (b) exchanges of assets of a similar nature and value are not a substantive event warranting the recognition of gains; and
- (c) requiring or permitting the recognition of gains from such exchanges enables entities to 'manufacture' gains by attributing inflated values to the assets exchanged, if the assets do not have observable market prices in active markets.

BC19 The approach described above raised issues about how to identify whether assets exchanged are similar in nature and value. The Board reviewed this topic, and noted views that:

- (a) under the *Framework* ¶, the recognition of income from an exchange of assets does not depend on whether the assets exchanged are dissimilar;
- (b) income is not necessarily earned only at the culmination of an earning process, and in some cases it is arbitrary to determine when an earning process culminates;
- (c) generally, under both measurement bases after recognition that are permitted under IAS 16, gain recognition is not deferred beyond the date at which assets are exchanged; and

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(d) removing 'existing carrying amount' measurement of property, plant and equipment acquired in exchange for similar assets would increase the consistency of measurement of acquisitions of assets.

BC20 The Board decided to require in IAS 16 that all items of property, plant and equipment acquired in exchange for non-monetary assets or a combination of monetary and non-monetary assets should be measured at fair value, except that, if the exchange transaction lacks commercial substance or the fair value of neither of the assets exchanged can be determined reliably, then the cost of the asset acquired in the exchange should be measured at the carrying amount of the asset given up.

BC21 The Board added the 'commercial substance' test in response to a concern raised in the comments it received on the ED. This concern was that, under the Board's proposal, an entity would measure at fair value an asset acquired in a transaction that did not have commercial substance, ie the transaction did not have a discernible effect on an entity's economics. The Board agreed that requiring an evaluation of commercial substance would help to give users of the financial statements assurance that the substance of a transaction in which the acquired asset is measured at fair value (and often, consequentially, a gain on the disposal of the transferred asset is recognised in income) is the same as its legal form.

BC22 The Board concluded that in evaluating whether a transaction has commercial substance, an entity should calculate the present value of the post-tax cash flows that it can reasonably expect to derive from the portion of its operations affected by the transaction. The discount rate should reflect the entity's current assessment of the time value of money and the risks specific to those operations rather than those that marketplace participants would make.

BC23 The Board included the 'reliable measurement' test for using fair value to measure these exchanges to minimise the risk that entities could 'manufacture' gains by attributing inflated values to the assets exchanged. Taking into consideration its project for the convergence of IFRSs and US GAAP, the Board discussed whether to change the manner in which its 'reliable measurement' test is described. The Board observed this was unnecessary because it believes that its guidance and that contained in US GAAP are intended to have the same meaning.

BC24 The Board decided to retain, in IAS 18 *Revenue*⁴¹, its prohibition on recognising revenue from exchanges or swaps of goods or services of a similar nature and value. The Board has on its agenda a project on revenue recognition and does not propose to make any significant amendments to IAS 18 until that project is completed.

Measurement after Recognition

Revaluation Model

BC25 The Board is taking part in research activities with national standard-setters on revaluations of property, plant and equipment. This research is intended to promote international convergence of standards. One of the most important issues is identifying the preferred measurement attribute for revaluations. This research could lead to proposals to amend IAS 16.

Depreciation—Unit of Measure

BC26 The Board's discussions about the potential improvements to the depreciation principle in the previous version of IAS 16⁴² included consideration of the unit of measure an entity uses to depreciate its items of property, plant and equipment. Of particular concern to the Board were situations in which the unit of measure is the 'item as a whole' even though that item may be composed of significant parts with individually varying useful lives or consumption patterns. The Board did not believe that, in these situations, an entity's use of approximation techniques, such as a weighted average useful life for the item as a whole, resulted in depreciation that faithfully represents an entity's varying expectations for the significant parts.

BC27 The Board sought to improve the previous version of IAS 16 by proposing in the ED revisions to existing guidance on separating an item into its parts and then further clarifying in the Standard the need for an entity to depreciate separately any significant parts of an item of property, plant and equipment. By doing so an entity will also separately depreciate the item's remainder.

Depreciation—Depreciable Amount

BC28 During its discussion of depreciation principles, the Board noted the concern that, under the cost model, the previous version of IAS 16 does not state clearly why an entity deducts an asset's residual value from its cost to determine

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the asset's depreciable amount. Some argue that the objective is one of precision, ie reducing the amount of depreciation so that it reflects the item's net cost. Others argue that the objective is one of economics, ie stopping depreciation if, because of inflation or otherwise, an entity expects that during its useful life an asset will increase in value by an amount greater than it will diminish.

BC29 The Board decided to improve the previous version of IAS 16 by making clear the objective of deducting a residual value in determining an asset's depreciable amount. In doing so, the Board did not adopt completely either the 'net cost' or the 'economics' objective. Given the concept of depreciation as a cost allocation technique, the Board concluded that an entity's expectation of increases in an asset's value, because of inflation or otherwise, does not override the need to depreciate it. Thus, the Board changed the definition of residual value to the amount an entity could receive for the asset currently (at the financial reporting date) if the asset were already as old and worn as it will be when the entity expects to dispose of it. Thus, an increase in the expected residual value of an asset because of past events will affect the depreciable amount; expectations of future changes in residual value other than the effects of expected wear and tear will not.

Depreciation—Depreciation Period

BC30 The Board decided that the useful life of an asset should encompass the entire time it is available for use, regardless of whether during that time it is in use or is idle. Idle periods most commonly occur just after an asset is acquired and just before it is disposed of, the latter while the asset is held either for sale or for another form of disposal.

BC31 The Board concluded that, whether idle or not, it is appropriate to depreciate an asset with a limited useful life so that the financial statements reflect the consumption of the asset's service potential that occurs while the asset is held. The Board also discussed but decided not to address the measurement of assets held for sale. The Board concluded that whether to apply a different measurement model to assets held for sale—which may or may not be idle—was a different question and was beyond the scope of the Improvements project.

BC32 In July 2003 the Board published ED 4 *Disposal of Non-current Assets and Presentation of Discontinued Operations*. ED 4 was published as part of the Board's short-term convergence project, the scope of which was broader than that of the Improvements project. In ED 4, the Board proposed that an entity should classify some of its assets as 'assets held for sale' if specified criteria are met. Among other things, the Board proposed that an entity should cease depreciating an asset classified in this manner, irrespective of whether the asset is idle. The basis for this proposal was that the carrying amount of an asset held for sale will be recovered principally through sale rather than future operations, and therefore accounting for the asset should be a process of valuation rather than allocation. The Board will amend IAS 16 accordingly when ED 4 is finalised.

Depreciation—Depreciation Method

BC33 The Board considered how an entity should account for a change in a depreciation method. The Board concluded that a change in a depreciation method is a change in the technique used to apply the entity's accounting policy to recognise depreciation as an asset's future economic benefits are consumed. Therefore, it is a change in an accounting estimate.

Derecognition

Derecognition Date

BC34 The Board decided that an entity should apply the revenue recognition principle in IAS 18 for sales of goods to its gains from the sales of items of property, plant and equipment. The requirements in that principle ensure the representational faithfulness of an entity's recognised revenue. Representational faithfulness is also the appropriate objective for an entity's recognised gains. However, in IAS 16, the revenue recognition principle's criteria drive derecognition of the asset disposed of rather than recognition of the proceeds received. Applying the principle instead to the recognition of the proceeds might lead to the conclusion that an entity will recognise a deferred gain. Deferred gains do not meet the definition of a liability under the *Framework*. Thus, the Board decided that an entity does not derecognise an item of property, plant and equipment until the requirements in IAS 18 to recognise revenue on the sale of goods are met.

Gain Classification

BC35 Although the Board concluded that an entity should apply the recognition principle for revenue from sales of goods

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to its recognition of gains on disposals of items of property, plant and equipment, the Board concluded that the respective approaches to income statement display should differ. The Board concluded that users of financial statements would consider these gains and the proceeds from an entity's sale of goods in the course of its ordinary activities differently in their evaluation of an entity's past results and their projections of future cash flows. This is because revenue from the sale of goods is typically more likely to recur in comparable amounts than are gains from sales of items of property, plant and equipment. Accordingly, the Board concluded that an entity should not classify as revenue gains on disposals of items of property, plant and equipment.

Assets Held for Rental to Others*

* Paragraphs BC35A–BC35F were added as a consequence of amendments to IAS 16 by *Improvements to IFRSs* issued in May 2008. At the same time, the Board also amended paragraph 6 ^(a) by replacing the term 'net selling price' in the definition of 'recoverable amount' with 'fair value less costs to sell' for consistency with the wording used in IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations* ^(a) and IAS 36 *Impairment of Assets* ^(a).

BC35A The Board identified that, in some industries, entities are in the business of renting and subsequently selling the same assets.

BC35B The Board noted that the Standard prohibits classification as revenue of gains arising from derecognition of items of property, plant and equipment. The Board also noted that paragraph BC35 states the reason for this is 'users of financial statements would consider these gains and the proceeds from an entity's sale of goods in the course of its ordinary activities differently in their evaluation of an entity's past results and their projections of future cash flows.'

BC35C Consistently with that reason, the Board concluded that entities whose ordinary activities include renting and subsequently selling the same assets should recognise revenue from both renting and selling the assets. In the Board's view, the presentation of gross selling revenue, rather than a net gain or loss on the sale of the assets, would better reflect the ordinary activities of such entities.

BC35D The Board concluded that the disclosure requirements of IAS 16, IAS 2 ^(a) and IAS 18 ^(a) would lead an entity to disclose relevant information for users.

BC35E The Board also concluded that paragraph 14 ^(a) of IAS 7 *Statement of Cash Flows* should be amended to present within operating activities cash payments to manufacture or acquire such assets and cash receipts from rents and sales of such assets.

BC35F The Board discussed the comments received in response to its exposure draft of proposed *Improvements to International Financial Reporting Standards* published in 2007 and noted that a few respondents would prefer the issue to be included in one of the Board's major projects such as the revenue recognition project or the financial statement presentation project. However, the Board noted that the proposed amendment would improve financial statement presentation before those projects could be completed and decided to add paragraph 68A ^(a) as previously exposed. A few respondents raised the concern that the term 'held for sale' in the amendment could be confused with the notion of held for sale in accordance with IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*. Consequently, the Board clarified in the amendment that IFRS 5 should not be applied in those circumstances.

Transitional Provisions

BC36 The Board concluded that it would be impracticable for an entity to determine retrospectively whether a previous transaction involving an exchange of non-monetary assets had commercial substance. This is because it would not be possible for management to avoid using hindsight in making the necessary estimates as of earlier dates. Accordingly, the Board decided that in accordance with the provisions of IAS 8 ^(a) an entity should consider commercial substance only in evaluating the initial measurement of future transactions involving an exchange of non-monetary assets.

Summary of Changes From the Exposure Draft

BC37 The main changes from the ED proposals to the revised Standard are as follows:

- (a) The ED contained two recognition principles, one applying to subsequent expenditures on existing items of

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




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property, plant and equipment. The Standard contains a single recognition principle that applies to costs incurred initially to acquire an item and costs incurred subsequently to add to, replace part of or service an item. An entity applies the recognition principle to the latter costs at the time it incurs them.

(b) Under the approach proposed in the ED, an entity measured an item of property, plant and equipment acquired in exchange for a non-monetary asset at fair value irrespective of whether the exchange transaction in which it was acquired had commercial substance. Under the Standard, a lack of commercial substance is cause for an entity to measure the acquired asset at the carrying amount of the asset given up.

(c) Compared with the Standard, the ED did not as clearly set out the principle that an entity separately depreciates at least the parts of an item of property, plant and equipment that are of significant cost.

(d) Under the approach proposed in the ED, an entity derecognised the carrying amount of a replaced part of an item of property, plant and equipment if it recognised in the carrying amount of the asset the cost of the replacement under the general recognition principle. In the Standard, an entity also applies this approach to a replacement of a part of an item that is not depreciated separately.

(e) In finalising the Standard, the Board identified further necessary consequential amendments to IFRS 1 , IAS 14 , IAS 34 , IAS 36 , IAS 37 , IAS 38 , IAS 40 , SIC-13 , SIC-21 , SIC-22  and SIC-32 .

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FASB - Financial Accounting Standards Board

360 Property, Plant, and Equipment
10 Overall
35 Subsequent Measurement
General

360 Property, Plant, and Equipment

10 - Overall

360-10-35 Subsequent Measurement

General

General Note: The Subsequent Measurement Section provides guidance on an entity's subsequent measurement and subsequent recognition of an item. Situations that may result in subsequent changes to carrying amount include impairment, fair value adjustments, depreciation and amortization, and so forth.

35-1 This Subsection addresses depreciation of property, plant, and equipment and the post acquisition accounting for an interest in the residual value of a leased asset.

> **Depreciation**

35-2 This guidance addresses the concept of depreciation accounting and the various factors to consider in selecting the related periods and methods to be used in such accounting.

35-3 Depreciation expense in financial statements for an asset shall be determined based on the asset's useful life.

35-4 The cost of a productive facility is one of the costs of the services it renders during its useful economic life. Generally accepted accounting principles (GAAP) require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which services are obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to distribute

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the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation.

35-5 See paragraph 360-10-35-20 : ¶ for a discussion of depreciation of a new cost basis after recognition of an **impairment** loss.

35-6 See paragraph 360-10-35-43 : ¶ for a discussion of cessation of depreciation on long-lived assets classified as held for sale.

> > Declining Balance Method

35-7 The declining-balance method is an example of one of the methods that meet the requirements of being systematic and rational. If the expected productivity or revenue-earning power of the asset is relatively greater during the earlier years of its life, or maintenance charges tend to increase during later years, the declining-balance method may provide the most satisfactory allocation of cost. That conclusion also applies to other methods, including the sum-of-the-years'-digits method, that produce substantially similar results.

> > Loss or Damage Experience as a Factor in Estimating Depreciable Lives

35-8 In practice, experience regarding loss or damage to depreciable assets is in some cases one of the factors considered in estimating the depreciable lives of a group of depreciable assets, along with such other factors as wear and tear, obsolescence, and maintenance and replacement policies.

> > Unacceptable Depreciation Methods

35-9 If the number of years specified by the Accelerated Cost Recovery System of the Internal Revenue Service (IRS) for recovery deductions for an asset does not fall within a reasonable range of the asset's useful life, the recovery deductions shall not be used as depreciation expense for financial reporting.

35-10 Annuity methods of depreciation are not acceptable for entities in general.

> > Accounting Changes

35-11 See paragraphs 250-10-45-17 through 45-20 : ¶ for guidance on the accounting and presentation of changes in methods of depreciation.

35-12 Paragraph Not Used : ¶

> Adjusting the Residual Value in Leased Assets by a Third Party

35-13 The following paragraph provides guidance on how an entity acquiring an interest in the residual value of a leased asset shall account for that asset during the lease term.

35-14 An entity acquiring an interest in the residual value of any leased asset, irrespective of the classification of the related lease by the lessor, shall not recognize increases to the asset's estimated value over the remaining term of the related lease, and the asset shall be reported at

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no more than its acquisition cost until sale or disposition. If it is subsequently determined that the fair value of the residual value of a leased asset has declined below the carrying amount of the acquired interest and that decline is other than temporary, the asset shall be written down to fair value, and the amount of the write-down shall be recognized as a loss. That fair value becomes the asset's new carrying amount, and the asset shall not be increased for any subsequent increase in its fair value before its sale or disposition.

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360 Property, Plant, and Equipment
10 Overall
35 Subsequent Measurement
Impairment or Disposal of Long-Lived Assets

Impairment or Disposal of Long-Lived Assets

General Note: The Subsequent Measurement Section provides guidance on an entity's subsequent measurement and subsequent recognition of an item. Situations that may result in subsequent changes to carrying amount include impairment, fair value adjustments, depreciation and amortization, and so forth.

35-15 There are unique requirements of accounting for the **impairment** or disposal of long-lived assets to be held and used or to be disposed of. Although this guidance deals with matters which may lead to the ultimate disposition of assets, it is included in this Subsection because it describes the measurement and classification of assets to be held and used and assets held for disposal before actual disposition and derecognition. See the Impairment or Disposal of Long-Lived Assets Subsection : of Section 360-10-40 for a discussion of assets or asset groups for which disposition has taken place in an exchange or distribution to owners.

> **Long-Lived Assets Classified as Held and Used**

35-16 This guidance addresses how long-lived assets or asset groups that are intended to be held and used in an entity's business shall be reviewed for impairment.

> > **Measurement of an Impairment Loss**

35-17 An impairment loss shall be recognized only if the carrying amount of a long-lived asset (**asset group**) is not recoverable and exceeds its fair value. The carrying amount of a long-lived asset (asset group) is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset (asset group). That assessment shall be based on the carrying amount of the asset (asset group) at the date it is tested for recoverability, whether in use (see paragraph 360-10-35-33 :) or under development (see paragraph 360-10-35-34 :). An impairment loss shall be measured as the

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amount by which the carrying amount of a long-lived asset (asset group) exceeds its fair value.

> > > Assets Subject to Asset Retirement Obligations

35-18 In applying the provisions of this Subtopic, the carrying amount of the asset being tested for impairment shall include amounts of capitalized asset retirement costs. Estimated future cash flows related to the liability for an asset retirement obligation that has been recognized in the financial statements shall be excluded from both of the following:

- a. The undiscounted cash flows used to test the asset for recoverability
- b. The discounted cash flows used to measure the asset's fair value.

35-19 If the fair value of the asset is based on a quoted market price and that price considers the costs that will be incurred in retiring that asset, the quoted market price shall be increased by the fair value of the asset retirement obligation for purposes of measuring impairment.

> > Adjusted Carrying Amount Becomes New Cost Basis

35-20 If an impairment loss is recognized, the adjusted carrying amount of a long-lived asset shall be its new cost basis. For a depreciable long-lived asset, the new cost basis shall be depreciated (amortized) over the remaining useful life of that asset. Restoration of a previously recognized impairment loss is prohibited.

> > When to Test a Long-Lived Asset for Recoverability

35-21 A long-lived asset (asset group) shall be tested for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. The following are examples of such events or changes in circumstances:

- a. A significant decrease in the market price of a long-lived asset (asset group)
- b. A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition
- c. A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator
- d. An accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group)
- e. A current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group)

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f. A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life. The term *more likely than not* refers to a level of likelihood that is more than 50 percent.

35-22 When a long-lived asset (asset group) is tested for recoverability, it also may be necessary to review depreciation estimates and method as required by Topic 250 : ¶ or the amortization period as required by Topic 350 : ¶. Paragraphs 250-10-45-17 through 45-20 : ¶ and 250-10-50-4 : ¶ address the accounting for changes in estimates, including changes in the method of depreciation, amortization, and depletion. Paragraphs 350-30-35-1 through 35-5 : ¶ address the determination of the useful life of an intangible asset. Any revision to the remaining useful life of a long-lived asset resulting from that review also shall be considered in developing estimates of future cash flows used to test the asset (asset group) for recoverability (see paragraphs 360-10-35-31 through 35-32 : ¶). However, any change in the accounting method for the asset resulting from that review shall be made only after applying this Subtopic.

> > Grouping Long-Lived Assets Classified as Held and Used

35-23 For purposes of recognition and measurement of an impairment loss, a long-lived asset or assets shall be grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. However, an impairment loss, if any, that results from applying this Subtopic shall reduce only the carrying amount of a long-lived asset or assets of the group in accordance with paragraph 360-10-35-28 : .

35-24 In limited circumstances, a long-lived asset (for example, a corporate headquarters facility) may not have identifiable cash flows that are largely independent of the cash flows of other assets and liabilities and of other asset groups. In those circumstances, the asset group for that long-lived asset shall include all assets and liabilities of the entity.

35-25 In limited circumstances, an asset group will include all assets and liabilities of the entity. For example, the cost of operating assets such as corporate headquarters or centralized research facilities may be funded by revenue-producing activities at lower levels of the entity. Accordingly, in limited circumstances, the lowest level of identifiable cash flows that are largely independent of other asset groups may be the entity level. See Example 4 (paragraph 360-10-55-35 : ¶).

> > > Effect of Goodwill when Grouping

35-26 Goodwill shall be included in an asset group to be tested for impairment under this Subtopic only if the asset group is or includes a reporting unit. Goodwill shall not be included in a lower-level asset group that includes only part of a reporting unit. Estimates of future cash flows used to test that lower-level asset group for recoverability shall not be adjusted for the effect of excluding goodwill from the group. The term *reporting unit* is defined in Topic 350 : ¶ as the same level as or one level below an **operating segment** ¶. That Topic requires that goodwill be tested for impairment at the reporting unit level.

35-27 Other than goodwill, the carrying amounts of any assets (such as accounts receivable and inventory) and liabilities (such as accounts payable, long-term debt, and asset retirement obligations) not covered by this Subtopic that are included in an asset group shall be adjusted in accordance with other applicable generally accepted accounting principles (GAAP) before

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testing the asset group for recoverability.Paragraph 350-20-35-31 : 21 requires that goodwill be tested for impairment only after the carrying amounts of the other assets of the reporting unit, including the long-lived assets covered by this Subtopic, have been tested for impairment under other applicable accounting guidance.

> > Allocating Impairment Losses to an Asset Group

35-28 An impairment loss for an asset group shall reduce only the carrying amounts of a long-lived asset or assets of the group. The loss shall be allocated to the long-lived assets of the group on a pro rata basis using the relative carrying amounts of those assets, except that the loss allocated to an individual long-lived asset of the group shall not reduce the carrying amount of that asset below its fair value whenever that fair value is determinable without undue cost and effort. See Example 1 (paragraph 360-10-55-20 : 21) for an illustration of this guidance.

> > Estimates of Future Cash Flows Used to Test a Long-Lived Asset for Recoverability

35-29 Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) shall include only the future cash flows (cash inflows less associated cash outflows) that are directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset (asset group). Those estimates shall exclude interest charges that will be recognized as an expense when incurred.

35-30 Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) shall incorporate the entity's own assumptions about its use of the asset (asset group) and shall consider all available evidence. The assumptions used in developing those estimates shall be reasonable in relation to the assumptions used in developing other information used by the entity for comparable periods, such as internal budgets and projections, accruals related to incentive compensation plans, or information communicated to others. However, if alternative courses of action to recover the carrying amount of a long-lived asset (asset group) are under consideration or if a range is estimated for the amount of possible future cash flows associated with the likely course of action, the likelihood of those possible outcomes shall be considered. A probability-weighted approach may be useful in considering the likelihood of those possible outcomes. See Example 2 (paragraph 360-10-55-23 : 21) for an illustration of this guidance.

35-31 Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) shall be made for the remaining useful life of the asset (asset group) to the entity. The remaining useful life of an asset group shall be based on the remaining useful life of the primary asset of the group. For purposes of this Subtopic, the primary asset is the principal long-lived tangible asset being depreciated or intangible asset being amortized that is the most significant component asset from which the asset group derives its cash-flow-generating capacity.The primary asset of an asset group therefore cannot be land or an intangible asset not being amortized.

35-32 Factors that an entity generally shall consider in determining whether a long-lived asset is the primary asset of an asset group include the following:

- a. Whether other assets of the group would have been acquired by the entity without the asset
- b. The level of investment that would be required to replace the asset

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c. The remaining useful life of the asset relative to other assets of the group. If the primary asset is not the asset of the group with the longest remaining useful life, estimates of future cash flows for the group shall assume the sale of the group at the end of the remaining useful life of the primary asset.

35-33 Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) that is in use, including a long-lived asset (asset group) for which development is substantially complete, shall be based on the existing service potential of the asset (asset group) at the date it is tested. The service potential of a long-lived asset (asset group) encompasses its remaining useful life, cash-flow-generating capacity, and for tangible assets, physical output capacity. Those estimates shall include cash flows associated with future expenditures necessary to maintain the existing service potential of a long-lived asset (asset group), including those that replace the service potential of component parts of a long-lived asset (for example, the roof of a building) and component assets other than the primary asset of an asset group. Those estimates shall exclude cash flows associated with future capital expenditures that would increase the service potential of a long-lived asset (asset group).

35-34 Estimates of future cash flows used to test the recoverability of a long-lived asset (asset group) that is under development shall be based on the expected service potential of the asset (group) when development is substantially complete. Those estimates shall include cash flows associated with all future expenditures necessary to develop a long-lived asset (asset group), including interest payments that will be capitalized as part of the cost of the asset (asset group). Subtopic 835-20 : ¶ requires the capitalization period to end when the asset is substantially complete and ready for its intended use.

35-35 If a long-lived asset that is under development is part of an asset group that is in use, estimates of future cash flows used to test the recoverability of that group shall include the cash flows associated with future expenditures necessary to maintain the existing service potential of the group (see paragraph 360-10-35-33 :) as well as the cash flows associated with all future expenditures necessary to substantially complete the asset that is under development (see the preceding paragraph). See Example 3 (paragraph 360-10-55-33 : ¶). See also paragraphs 360-10-55-7 through 55-18 : ¶ for considerations of site restoration and environmental exit costs.

>> Fair Value

35-36 For long-lived assets (asset groups) that have uncertainties both in timing and amount, an expected present value technique will often be the appropriate technique with which to estimate fair value.

> Long-Lived Assets Classified as Held for Sale

35-37 This guidance addresses the accounting for expected disposal losses for long-lived assets and asset groups that are classified as held for sale but have not yet been sold. See paragraphs 360-10-45-9 through 45-11 : ¶ for the initial criteria to be met for classification as held for sale.

>> Measurement of Expected Disposal Loss or Gain

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35-38 Costs to sell are the incremental direct costs to transact a sale, that is, the costs that result directly from and are essential to a sale transaction and that would not have been incurred by the entity had the decision to sell not been made. Those costs include broker commissions, legal and title transfer fees, and closing costs that must be incurred before legal title can be transferred. Those costs exclude expected future losses associated with the operations of a long-lived asset (**disposal group**) while it is classified as held for sale. Expected future operating losses that marketplace participants would not similarly consider in their estimates of the fair value less cost to sell of a long-lived asset (disposal group) classified as held for sale shall not be indirectly recognized as part of an expected loss on the sale by reducing the carrying amount of the asset (disposal group) to an amount less than its current fair value less cost to sell. If the sale is expected to occur beyond one year as permitted in limited situations by paragraph 360-10-45-11 : 21, the cost to sell shall be discounted.

35-39 The carrying amounts of any assets that are not covered by this Subtopic, including goodwill, that are included in a disposal group classified as held for sale shall be adjusted in accordance with other applicable GAAP prior to measuring the fair value less cost to sell of the disposal group. Paragraphs 350-20-40-1 through 40-7 : 24 provide guidance for allocating goodwill to a lower-level asset group to be disposed of that is part of a reporting unit and that constitutes a business. Goodwill is not included in a lower-level asset group to be disposed of that is part of a reporting unit if it does not constitute a business.

35-40 A loss shall be recognized for any initial or subsequent write-down to fair value less cost to sell. A gain shall be recognized for any subsequent increase in fair value less cost to sell, but not in excess of the cumulative loss previously recognized (for a write-down to fair value less cost to sell). The loss or gain shall adjust only the carrying amount of a long-lived asset, whether classified as held for sale individually or as part of a disposal group.

35-41 See paragraphs 310-40-35-11 : 24 and 310-40-40-10 : 24 for guidance related to determination of cost basis for foreclosed assets under Subtopic 310-40 : 24 and the measurement of cumulative losses previously recognized under the preceding paragraph.

35-42 See paragraphs 830-30-45-13 through 45-15 : 24 for guidance regarding the application of Topic 830 : 24 to an investment being evaluated for impairment that will be disposed of.

> > Accounting While Held for Sale

35-43 A long-lived asset (disposal group) classified as held for sale shall be measured at the lower of its carrying amount or fair value less cost to sell. If the asset (disposal group) is newly acquired, the carrying amount of the asset (disposal group) shall be established based on its fair value less cost to sell at the acquisition date. A long-lived asset shall not be depreciated (amortized) while it is classified as held for sale. Interest and other expenses attributable to the liabilities of a disposal group classified as held for sale shall continue to be accrued.

> > Changes to a Plan of Sale

35-44 If circumstances arise that previously were considered unlikely and, as a result, an entity decides not to sell a long-lived asset (disposal group) previously classified as held for sale, the asset (disposal group) shall be reclassified as held and used. A long-lived asset that is reclassified shall be measured individually at the lower of the following:

- a. Its carrying amount before the asset (disposal group) was classified as held for sale, adjusted for any depreciation (amortization) expense that would have been recognized had the asset (disposal group) been continuously classified as held and used

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b. Its fair value at the date of the subsequent decision not to sell.

35-45 If an entity removes an individual asset or liability from a disposal group previously classified as held for sale, the remaining assets and liabilities of the disposal group to be sold shall continue to be measured as a group only if the criteria in paragraph 360-10-45-9 : ~~are~~ are met. Otherwise, the remaining long-lived assets of the group shall be measured individually at the lower of their carrying amounts or fair values less cost to sell at that date.

> Long-Lived Assets to Be Disposed of Other than by Sale

35-46 This guidance addresses the accounting for impairment of long-lived assets and asset groups that are intended to be disposed of by abandonment.

> > Long-Lived Assets to Be Abandoned

35-47 For purposes of this Subtopic, a long-lived asset to be abandoned is disposed of when it ceases to be used. If an entity commits to a plan to abandon a long-lived asset before the end of its previously estimated useful life, depreciation estimates shall be revised in accordance with paragraphs 250-10-45-17 through 45-20 : ~~it~~ and 250-10-50-4 : ~~it~~ to reflect the use of the asset over its shortened useful life (see paragraph 360-10-35-22 :).

35-48 Because the continued use of a long-lived asset demonstrates the presence of service potential, only in unusual situations would the fair value of a long-lived asset to be abandoned be zero while it is being used. When a long-lived asset ceases to be used, the carrying amount of the asset should equal its salvage value, if any. The salvage value of the asset shall not be reduced to an amount less than zero.

> > Long-Lived Asset Temporarily Idled

35-49 A long-lived asset that has been temporarily idled shall not be accounted for as if abandoned.

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**Big Rivers Electric Corporation
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Execution Version

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**AMENDED AND CONSOLIDATED
LOAN CONTRACT**

Dated as of July 16, 2009

between

BIG RIVERS ELECTRIC CORPORATION

and

UNITED STATES OF AMERICA

**RUS Project Designation:
Big Rivers**

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**Attachment 4 for Response to AG 2-89
Exhibits**

- Exhibit A Lockbox Agreement**
- Exhibit B Equal Opportunity Contract Provisions**
- Exhibit C Description of Rating Agency Services**
- Exhibit D Wholesale Power Contracts**

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AMENDED AND CONSOLIDATED LOAN CONTRACT

THIS AMENDED AND CONSOLIDATED LOAN CONTRACT, dated as of July 16, 2009, is between BIG RIVERS ELECTRIC CORPORATION (together with any successors and assigns, the "Borrower"), a cooperative corporation organized and existing under the laws of the Commonwealth of Kentucky, and the UNITED STATES OF AMERICA (the "Government"), acting by and through the Administrator (together with any person succeeding to the powers and rights of the Administrator with respect to this Agreement, the "Administrator") of the Rural Utilities Service (together with any agency succeeding to the powers and rights of the Rural Utilities Service with respect to this Agreement, the "RUS");

RECITALS

WHEREAS, the Borrower previously incurred, pursuant to the Act (as defined in Article I) and under the Existing Loan Contract (as defined below), certain indebtedness and other obligations to, or guaranteed by, the Government, acting by and through the Administrator of the RUS, which indebtedness and other obligations are evidenced by the RUS Notes (as defined in Article I); and

WHEREAS, in connection with the loans and other obligations evidenced by the RUS Notes, the Borrower and the Government, acting by and through the Administrator of the RUS, have entered into that certain New RUS Agreement, dated as of July 15, 1998, (the "Existing Loan Contract"); and

WHEREAS, to secure the indebtedness and other obligations evidenced by the RUS Notes and to secure certain other indebtedness, the Borrower entered into that certain Third Restated Mortgage and Security Agreement, dated as of August 1, 2001 (the "Mortgage"), by and among the Borrower, as mortgagor, and the Government, acting by and through the Administrator of the RUS; Ambac Assurance Corporation; Dexia Bank (as successor to Credit Suisse First Boston); U.S. Bank Trust National Association as trustee; National Rural Utilities Cooperative Finance Corporation; PBR-1 Statutory Trust; PBR-2 Statutory Trust; PBR-3 Statutory Trust; FBR-1 Statutory Trust; FBR-2 Statutory Trust; and Ambac Credit Products, LLC, as mortgagees, the ("RUS Mortgage"); and

WHEREAS, simultaneously herewith, the Mortgage is being released and, pursuant to the Indenture (as defined in Article I), Borrower has granted a security title to and a security interest in substantially all of its real and personal property to secure the RUS Notes and the certain other obligations secured under the Indenture, as more particularly set forth therein; and

WHEREAS, in connection with the release of the Mortgage and the substitution of the Indenture, the Borrower and the Government intend to amend, restate and consolidate the Existing Loan Contract as herein set forth; and

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NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto amend and consolidate the Existing Loan Contract to read in its entirety, and agree and bind themselves, as follows:

ARTICLE I.

DEFINITIONS

Capitalized terms that are not defined herein shall have the meanings set forth in the Indenture. The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made, in accordance with Accounting Requirements.

“Accounting Requirements” shall mean the requirements of the system of accounts prescribed by the RUS.

“Act” shall mean the Rural Electrification Act of 1936, as amended.

“Agreement” shall mean this Amended and Consolidated Loan Contract, together with all schedules and exhibits hereto, and also all subsequent supplements or amendments hereto.

“Business Day” shall mean any day that the RUS is open for business.

“Capital Assets” shall mean all tangible and intangible utility plant, construction in progress, non-utility property, material supplies and equipment normally used in the Borrower’s system.

“Credit Rating” shall mean a rating assigned by a Rating Agency (i) to any long-term indebtedness (that is not subject to Credit Enhancement) (including, without limitation, indebtedness issued by any governmental authority with respect to which the Borrower is an obligor) and secured directly or indirectly under the Indenture or (ii) if a Rating Agency has not assigned a rating to indebtedness of the type described in clause (i) hereof, a “shadow rating” of the Borrower’s senior, secured long-term indebtedness (that is not subject to Credit Enhancement).

“Competitive Transition Charges” means amounts that the Company is authorized or permitted to collect, directly or indirectly, from the ultimate consumers of electric power and energy under state or federal statutes or regulations enacted or promulgated in connection with the opening of the electric markets to retail competition, whether or not such consumers are taking energy supplied directly or indirectly by the Company. It is intended that this definition be broadly construed in order to take into consideration the changing nature of the electric utility industry resulting from the implementation of retail competition.

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“Distributions” shall mean for the Borrower, in any calendar year, to declare or pay any dividends, or pay or determine to pay any patronage refunds, or retire any patronage capital or make any other Cash Distributions, to its members, stockholders or consumers; provided, however, that for the purposes of this Agreement a “Cash Distribution” shall be deemed to include any general cancellation or abatement of charges for electric energy or services furnished by the Borrower, including the rebate of an abatement of wholesale power costs previously incurred pursuant to an order of a state regulatory authority or a wholesale power cost adjustment clause or similar power pricing agreement between the Borrower and a power supplier, but not including the repayment of a membership fee upon termination of a membership.

“Equity” shall mean the Borrower’s total margins and equities computed in accordance with Accounting Requirements but excluding any Regulatory Created Assets.

“Event of Default” shall have the meaning as defined in Article VI of this Agreement.

“Existing Loan Contract” shall have the meaning set forth in the second WHEREAS clause of this Agreement.

“Fitch” shall mean Fitch IBCA, Inc., and any successor thereto.

“General Manager” shall mean the President and Chief Executive Officer of the Borrower or the person performing the duties of a chief executive officer if no person holds such title and, in the event of any dispute between the Borrower and the Government as to who is the General Manager, the Administrator may designate a person or position that shall be the General Manager for purposes of this Agreement.

“Indenture” shall mean the Indenture, dated as of May 1, 2009, entered into by the Borrower and U.S. Bank National Association, as trustee, and all amendments and supplements thereto.

“Interest Expense” shall mean the interest expense of the Borrower computed pursuant to Accounting Requirements.

“Investment” shall mean any loan or advance to, or any investment in, or purchase or commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assumption or other obligation or liability with respect to the obligations of, any other person, firm or corporation, except investments in securities or deposits issued, guaranteed or fully insured as to payment by the Government or any agency thereof and except any other investments set forth in the RUS Regulations (7 C.F.R. § 1717.655) as excluded from computations of the amounts and types of investments for which RUS approval is required.

“Investment Grade” means a Credit Rating of BBB- (or its then current equivalent) or higher, if issued by S&P or Fitch; Baa3 (or its then current equivalent) or higher, if issued by Moody’s; and any comparable investment grade rating if issued by any other Rating Agency.

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“Laws” shall have the meaning as defined in Paragraph (e) of Article II of this Agreement.

“Loans” shall mean the loans and other obligations described in Article III of this Agreement.

“Loan Documents” shall mean, collectively, this Agreement, the Indenture, the Lockbox Agreement and the RUS Notes.

“Material Adverse Effect” shall mean a material adverse effect on the condition, financial or otherwise, operations, properties or business of the Borrower or on the ability of the Borrower to perform its obligations under the Loan Documents.

“Moody’s” shall mean Moody’s Investors Service, and any successor thereto.

“Net Utility Plant” shall mean the amount constituting the Total Utility Plant of the Borrower, less depreciation, computed in accordance with Accounting Requirements.

“Permitted Debt” shall have the meaning set forth in Section 5.25.

“Prior Loan Contracts” shall mean have the meaning as defined in Section 8.16.

“Prudent Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. “Prudent Utility Practice” is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to include a spectrum of possible practices, methods or acts generally in acceptance in light of the circumstances.

“Rating Agency” shall mean S&P, Moody’s, Fitch or, provided that it is acceptable to the RUS, any other nationally recognized statistical rating organization (within the meaning of the rules of the United States Securities and Exchange Commission).

“Regulatory Created Assets” shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, computed pursuant to Accounting Requirements.

“Restricted Rentals” shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term “finance lease” shall mean any lease having a rental term (including the term for which such lease may be

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renewed or extended at the option of the lessee) in excess of three years and covering property having an initial cost of \$250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers. Restricted Rentals shall not include any amounts paid under any of the Facility Leases (as defined in the Indenture).

“RUS Notes” shall mean the RUS Series A Note and the RUS Series B Note.

“RUS Regulations” shall mean the rules, regulations and bulletins of general applicability published by the RUS from time to time as such rules, regulations and bulletins exist at the date of applicability thereof, including but not limited to the rules and regulations set forth at 7 C.F.R. 1700, and, unless the context clearly demonstrates a contrary intent, shall also include any rules and regulations of other Federal entities which the RUS is required by law to implement.

“RUS Series A Note” shall mean that RUS 2009 Promissory Note Series A, dated July 16, 2009 in the stated principal amount of \$602,573,536 executed by the Borrower and delivered to the Government.

“RUS Series B Note” shall mean that RUS 2009 Promissory Note Series B, dated July 16, 2009 in the stated principal amount of \$245,530,257.30 executed by the Borrower and delivered to the Government.

“Smelter Contracts” and each a “Smelter Contract” shall mean (i) the Wholesale Electric Service Agreement (Alcan) dated as of July 1, 2009 by and between the Borrower and Kenergy Corp., (ii) the Wholesale Electric Service Agreement (Century) dated as of July 1, 2009 by and between the Borrower and Kenergy Corp., (iii) the Retail Electric Service Agreement dated as of July 1, 2009 by and between Kenergy Corp. and Alcan Primary Products Corporation, (iv) the Retail Electric Service Agreement dated as of July 1, 2009 by and between Kenergy Corp. and Century Aluminum of Kentucky General Partnership, (v) the Coordination Agreement dated as of July 1, 2009 by and between the Borrower and Alcan Primary Products Corporation, and (vi) the Coordination Agreement dated as of July 1, 2009 by and between the Borrower and Century Aluminum of Kentucky General Partnership.

“Special Construction Account” shall have the meaning as defined in Section 5.22.

“Subordinated Indebtedness” shall mean secured indebtedness of the Borrower subordinated to the prior payment of the RUS Notes.

“Subsidiary” shall mean a corporation that is a subsidiary of the Borrower and subject to the Borrower’s control, as defined by Accounting Requirements.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

“System” shall have the meaning as defined in the Indenture.

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“Total Assets” shall mean an amount constituting the total assets of the Borrower as computed pursuant Accounting Requirements, but excluding any Regulatory Created Assets.

“Total Utility Plant” shall mean the amount constituting the total utility plant (gross) of the Borrower computed in accordance with Accounting Requirements.

“Unwind Transaction” shall mean the termination of the contractual relationships and property interests contemplated by the Transaction Termination Agreement dated as of March 26, 2007 among the Borrower, LG&E Energy Marketing Inc. and Western Kentucky Energy Corp.

“Wholesale Power Contracts” shall mean, collectively and individually, the wholesale power contracts in effect between the Borrower and each of its member distribution cooperatives, which are described in the attached Exhibit D, and all amendments, supplements or replacements thereto or thereof.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES

Recognizing that the RUS is relying hereon, the Borrower represents and warrants, as of the date of this Agreement, as follows:

(a) *Organization; Power, Etc.* The Borrower: (i) is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business makes such qualification necessary; (iii) has all requisite corporate and legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Loan Documents; and (iv) has duly and lawfully obtained and maintained all licenses, certificates, permits, authorizations and approvals which are necessary to the conduct of its business or required by applicable Laws.

(b) *Authority.* The execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and do not violate any provision of law or of the Articles of Incorporation or Bylaws of the Borrower or result in a breach of, or constitute a default under, any agreement, indenture or other instrument to which the Borrower is a party or by which it may be bound.

(c) *Consents.* No consent, permission, authorization, order or license of any governmental authority is necessary in connection with the execution, delivery or performance of the Loan Documents, except such as have been obtained and are in full force and effect.

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(d) *Binding Agreement.* Each of the Loan Documents, the Wholesale Power Contracts and the Smelter Contracts is, or when executed and delivered will be, the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(e) *Compliance With Laws.* The Borrower is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, "Laws"), the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

(f) *Litigation.* There are no pending legal, arbitration or governmental actions or proceedings to which the Borrower is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect, and to the best of the Borrower's knowledge, no such actions or proceedings are threatened or contemplated, except as the Borrower has disclosed to the RUS in writing.

(g) *Financial Statements, No Material Adverse Change; Etc.* The financial statements, including RUS Form 12, submitted to RUS fairly and fully present the financial condition of the Borrower and the results of its operations as of December 31, 2008 and were prepared in accordance with Accounting Requirements consistently applied. Since December 31, 2008, there has been no material adverse change in the financial condition or operations of the Borrower. The financial statements submitted to the Kentucky Public Service Commission in connection with Unwind Transaction (Case No. 2007-0045) fairly and fully presented the financial condition of the Borrower and the results of its operations at the time of their filing (subject to any final year-end adjustments and footnotes) and any projections filed by the Borrower in the proceeding of the Kentucky Public Service Commission to approve the Unwind Transaction were based on assumptions which were commercially reasonable at the time any such projections were filed.

(h) *Budgets; Projections; Etc.* All budgets, projections, feasibility studies, appraisals, and other documentation submitted by the Borrower to the RUS and any Rating Agency then assigning a Credit Rating are based on assumptions that are reasonable and realistic, as of the date hereof, no fact has come to light, and no event or transaction has occurred, which would cause any assumption made therein not to be reasonable or realistic.

(i) *Location of Properties.* All property and interests therein of the Borrower are located in the states and counties identified in the Indenture.

(j) *Principal Place of Business; Records.* The principal place of business and chief executive office of the Borrower is at the address of the Borrower specified in Section 8.2.

(k) *Subsidiaries.* The Borrower has no Subsidiaries other than Big Rivers Leasing LLC, a Delaware limited liability company.

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(l) *Defaults Under Other Agreements.* The Borrower is not in default under any agreement or instrument under which the Borrower is a party or to which any of its property is subject that could reasonably be expected to have a Material Adverse Effect.

(m) *Title to Property.* As to the property which is included in the description of the Trust Estate, the Borrower holds good and marketable title to all of its real property and owns all of its personal property free and clear of any lien or encumbrance other than Permitted Exceptions and liens permitted by Section 14.6 of the Indenture.

ARTICLE III.

THE LOANS

Section 3.1. The Existing Loans

The Borrower has borrowed funds from the Government, acting by and through the Administrator of the RUS, evidenced by the RUS Notes, has agreed to reimburse the Government, acting by and through the Administrator of the RUS, for the amounts borrowed pursuant to the terms of the RUS Notes.

Section 3.2. No Further Advances

The Borrower acknowledges and agrees that all amounts to be advanced to the Borrower under the RUS Notes have been advanced and the Government, acting by or through the Administrator of the RUS, is under no obligation to make any further advances to the Borrower under the RUS Notes.

Section 3.3. Interest Rates and Payment

(a) *Interest Rates.* The RUS Notes shall be payable and bear interest, as therein provided.

(b) *Application of Payments.* All payments made to RUS on the Borrower's behalf or for the account of the Borrower shall be accepted by the Government and shall be applied as follows: (i) first, if and only if, at the time of the Government's receipt of such amounts, any payments are then due and owing under the RUS Series B Note, then such amounts shall be applied to the RUS Series B Note to the extent, and only to the extent, of such payments then due and owing thereunder, (ii) second, to any amounts then due and owing under the RUS Series A Note, and (iii) third, as a prepayment of principal on the RUS Series A Note. In the absence of a written directive from Borrower, no amounts paid to the Government shall be applied as a prepayment on the RUS Series B Note unless and until the obligations of Borrower under the RUS Series A Note have been satisfied in full.

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(c) *Electronic Funds Transfer.* Except as otherwise prescribed by the RUS, the Borrower shall make all payments on the RUS Notes utilizing electronic funds transfer procedures as specified by the RUS.

Section 3.4. Prepayment

The Borrower may prepay the RUS Notes in whole or in part in the sole discretion of the Borrower without penalty or prepayment premium, provided, however, in no event shall such a voluntary prepayment of the RUS Series B Note be deemed an acceleration or cause an adjustment to the principal thereof.

ARTICLE IV.

AFFIRMATIVE COVENANTS

Section 4.1. Generally

Unless otherwise agreed to in writing by the RUS, while this Agreement is in effect, the Borrower shall duly observe each of the affirmative covenants contained in this Article IV.

Section 4.2. Performance under Loan Documents

The Borrower shall duly observe and perform all of its obligations under each of the Loan Documents.

Section 4.3. Annual Certification

Within ninety (90) days after the close of each fiscal year (or, if the Borrower has delivered written notice to the RUS prior to the expiration of such ninety (90) day period that the Borrower has determined in good faith that an additional thirty (30) days for such delivery is necessary or advisable, then within one hundred twenty (120) days after the close of the fiscal year with respect to which such notice has been delivered), the Borrower shall deliver to the RUS a written statement signed by its General Manager, stating that during such year the Borrower has fulfilled its obligations under the Loan Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to the General Manager and the nature and status thereof.

Section 4.4. Rates and Margins for Interest Ratios

(a) *Prospective Requirement.* The Borrower shall design and implement rates for utility service furnished by it to maintain, on an annual basis, the Margins for Interest Ratio specified in Section 13.14 of the Indenture.

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(b) *Prospective Notice of Change in Rates.* The Borrower shall give the RUS sixty (60) days' written notice prior to the effective date of any proposed change in the Borrower's general rate structure.

(c) *Routine Reporting of Margins for Interest Ratio.* The Borrower shall report to the RUS, no later than 45 days after December 31 of each year, in such written format as the RUS may require, the Margins for Interest Ratio that was achieved during the preceding 12-month period ending on December 31 of such year.

(d) *Reporting Non-achievement of Retrospective Requirement.* If the Borrower fails to achieve the Margins for Interest Ratio specified in Section 13.14 of the Indenture for any fiscal year, it must promptly notify RUS in writing to that effect.

(e) *Corrective Plans.* Within thirty (30) days of (i) sending a notice to the RUS under paragraph (d) above that shows the Margins for Interest Ratio specified by Section 13.14 of the Indenture was not achieved for any fiscal year, or (ii) being notified by the RUS that the Margins for Interest Ratio specified by Section 13.14 of the Indenture was not achieved for any fiscal year, whichever is earlier, the Borrower in consultation with the RUS shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken to achieve the specified Margins for Interest Ratio on a timely basis.

(f) *Noncompliance.* Failure to design and implement rates pursuant to paragraph (a) of this section and failure to develop and implement the plan in accordance with the terms of paragraph (e) of this section shall constitute an Event of Default under this Agreement in the event that RUS so notifies the Borrower to that effect under Section 6.1(d) of this Agreement.

Section 4.5. Financial Books

The Borrower shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all of the dealings, business and affairs of the Borrower and its Subsidiaries, if any, in accordance with any applicable Accounting Requirements.

Section 4.6. Rights of Inspection

The Borrower shall afford the RUS, through its representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and the right to inspect the System, any other property encumbered by the Indenture, and any or all books, records, accounts, invoices, contracts, leases, payrolls, canceled checks, statements and other documents and papers of every kind belonging to or in the possession of the Borrower or in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

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Section 4.7. Real Property Acquisition

In acquiring real property, the Borrower shall comply in all material respects with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, and 49 C.F.R. part 24, referenced by 7 C.F.R. part 21, to the extent applicable to such acquisition.

Section 4.8. Financial Reports

Within 120 days of the end of each fiscal year, the Borrower shall cause to be prepared and furnished to the RUS a full and complete annual report of its financial condition and of its operations in form and substance satisfactory to the RUS, audited and certified by an Independent certified public accountant satisfactory to the RUS and accompanied by a report of such audit in form and substance reasonably satisfactory to the RUS. The Borrower shall also furnish to the RUS from time to time such other reports concerning the financial condition or operations of the Borrower, including its Subsidiaries, as the RUS may request or RUS Regulations require.

Section 4.9. Miscellaneous Reports and Notices

The Borrower shall furnish to the RUS:

(a) *Notice of Default.* Promptly after becoming aware thereof, notice of: (i) the occurrence of any Event of Default under this Agreement or event which with the giving of notice or the passage of time, or both, would become an Event of Default; and (ii) the receipt of any notice given pursuant to the Indenture with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an "Event of Default" under the Indenture and (iii) the occurrence of any event under any agreement which with the giving of notice or the passage of time, or both, could become an "Event of Default" under such agreement and result in a Material Adverse Effect.

(b) *Notice of Non-Environmental Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency or instrumentality affecting the Borrower which, could reasonably be expected to have a Material Adverse Effect.

(c) *Notice of Environmental Litigation.* Without limiting the provisions of Section 4.9(b) above, promptly after receipt thereof, notice of the receipt of all pleadings, orders, complaints, indictments, or other communications alleging a condition that may require the Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations or such laws, or which claim personal injury or property damage to any person as a result of environmental factors or conditions for which the Borrower is not fully covered by insurance, or which could reasonably be expected to have a Material Adverse Effect.

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(d) *Notice of Application for Competitive Transition Charges.* Promptly, but no later than 60 days prior to submission to any approval authority, including without limitation, any regulatory or legislative authority, written notice of an application for authority to collect Competitive Transition Charges. Without limiting the right of RUS to request other information, RUS has the right to request the Borrower to provide to RUS a written appraisal or other financial assessment of the Competitive Transition Charges.

(c) *Notice of Change of Place of Business.* Promptly in writing, notice of any change in location of its principal place of business or the office where its records concerning accounts and contract rights are kept.

(d) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could reasonably be expected to have a Material Adverse Effect.

(e) *Ratings.* Promptly after receipt thereof, copies of Credit Ratings and copies of any reports with respect to the Borrower or its Credit Rating issued by any Rating Agency.

(f) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter that has had or could reasonably be expected to have a Material Adverse Effect.

(g) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations, properties or business of the Borrower as the RUS may, from time to time, reasonably request.

Section 4.10. Variable Rate Indebtedness

In connection with the furnishing of its annual report to the RUS pursuant to Section 4.8, the Borrower shall report to the RUS, in such written format as may be acceptable to the RUS, the specific maturities of all of the Borrower's outstanding indebtedness and, the interest rates applicable thereto, including, without limitation, with respect to any indebtedness not bearing a fixed rate through the maturity of such indebtedness, the method and timing for adjustment and readjustment of the applicable interest rate.

Section 4.11. Compliance with Laws

The Borrower shall operate and maintain the System and its properties in compliance in all material respects with all applicable Laws.

Section 4.12. Separate Accounts

The Borrower shall execute and deliver, with a financial institution approved by the RUS, a lockbox agreement or agreements substantially in the form of Exhibit A attached hereto ("Lockbox Agreement") and shall at all times maintain such Lockbox Agreement in full force and effect. The Borrower shall not, without first complying with the requirements of

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Section 8.1, amend, supplement or otherwise modify the Lockbox Agreement. In the event: (a) the Borrower no longer has two Investment Grade credit ratings from at least two Rating Agencies; (b) the Borrower's total current and accrued liabilities exceed the Borrower's total current and accrued assets; (c) the Administrator determines the System is incapable of providing reliable service to the members of the Borrower pursuant to the terms of the Wholesale Power Contracts; (d) the Administrator determines that as a consequence of any change in the condition, financial or otherwise, operations, properties or business of the Borrower, the Borrower will be unable to perform its material obligations under (i) this Agreement, (ii) the Wholesale Power Contracts, (iii) the RUS Notes, or (iv) the Indenture; or (e) there is an Event of Default under the Indenture, or any event that with the passage of time or giving of notice, or both, would constitute an Event of Default under the Indenture, the Borrower shall, if so directed in writing by the Administrator of the RUS, (a) deposit, pursuant to the Lockbox Agreement, all cash proceeds of the Trust Estate, including, without limitation, checks, money and the like (other than cash proceeds deposited or required to be deposited with the Trustee pursuant to the Indenture), which cash proceeds shall include, without limitation, all payments by members of the Borrower on account of the Wholesale Power Contracts, in separate deposit or other accounts, segregated from all other monies, revenues and investments of the Borrower, and (b) take all such other actions as the RUS shall request to continue perfection of the lien of the Indenture in such proceeds for the benefit of all Holders of the Outstanding Secured Obligations.

Section 4.13. Property Maintenance

The Borrower shall maintain and preserve its System in compliance in all material respects with the provisions of the Indenture, RUS Regulations, all applicable Laws, and Prudent Utility Practice.

Section 4.14. Load Forecast

The Borrower shall prepare and use load forecasts with respect to its electric loads and future energy and capacity requirements in conformance with RUS Regulations.

Section 4.15. Long Range Engineering Plans and Construction Work Plans

The Borrower shall develop, maintain and use up-to-date long-range engineering plans and construction work plans in conformance with RUS Regulations.

Section 4.16. Design Standards, Construction Standards and List of Materials

The Borrower shall use design standards, construction standards, and lists of acceptable materials in conformance with RUS Regulations.

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**Section 4.17. Attachment 4 for Response to AG 2-89
Plans and Specifications**

The Borrower shall submit plans and specifications for construction to RUS for review and approval, in conformance with RUS Regulations, if the construction will be financed in whole or in part by a loan made or guaranteed by RUS.

**Section 4.18. Standard Forms of Construction Contracts, and Engineering and
Architectural Services Contracts**

The Borrower shall use the standard forms of contracts promulgated by the RUS for construction, procurement, engineering services and architectural services, in conformance with RUS Regulations, if the construction, procurement, or services will be financed in whole or in part by a loan made or guaranteed by the RUS.

Section 4.19. Contract Bidding Requirements

The Borrower shall follow the RUS contract bidding procedures in conformance with RUS Regulations when contracting for construction or procurement, if the construction or procurement will be financed in whole or in part by a loan made or guaranteed by the RUS.

Section 4.20. Nondiscrimination

(a) *Equal Opportunity Provisions in Construction Contracts.* The Borrower shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from the RUS or borrowed on the credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Exhibit B attached hereto entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Borrower.* The Borrower further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.

(c) *Sanctions and Penalties.* The Borrower agrees that it shall cooperate actively with the RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish the RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the RUS's primary responsibility for securing compliance. The Borrower further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such

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sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Borrower agrees that if it fails or refuses to comply with these undertakings the RUS may cancel, terminate or suspend in whole or in part this contract, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Borrower, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 4.21. "Buy American" Requirements

The Borrower shall use or cause to be used in connection with the expenditures of funds if such funds were obtained in whole or in part by a loan being made or guaranteed by the RUS only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or any eligible country substantially all from articles, materials, and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent the RUS shall determine that such use shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this section, an "eligible country" is any country that has with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.

Section 4.22. Depreciation Plan

The Borrower shall adopt as its depreciation rates only those that have been previously approved for the Borrower by RUS (through RUS Regulation or by specific approval by RUS). The Borrower shall not file with or submit for approval of any regulatory bodies depreciation rates which are inconsistent with those approved for the Borrower by RUS.

Section 4.23. Maintenance of Credit Ratings

(a) *Maintenance of Credit Ratings.* As long as there remains any RUS Note, the Borrower shall (i) maintain a Credit Rating from at least two Rating Agencies and (ii) continuously subscribe with a Rating Agency for the services described in Exhibit C attached hereto.

(b) *Reporting Non-achievement of Investment Grade Credit Rating.* If the Borrower fails to maintain two Credit Ratings of Investment Grade, it must notify RUS in writing to that effect within five (5) days after becoming aware of such failure.

(c) *Corrective Plans.* Within thirty (30) days of the date on which the Borrower fails to maintain two Credit Ratings of Investment Grade, the Borrower in consultation with the RUS

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shall provide a written plan satisfactory to the RUS setting forth the actions that shall be taken that are reasonably expected to achieve two Credit Ratings of Investment Grade.

(d) *Noncompliance.* Failure to implement a corrective plan developed in accordance with paragraph (c) of this section shall constitute an Event of Default under this Agreement.

ARTICLE V.

NEGATIVE COVENANTS

Section 5.1. General

Unless otherwise agreed to in writing by the RUS, while this Agreement is in effect, the Borrower shall duly observe each of the negative covenants set forth in this Article V.

Section 5.2. Acquisition of Capital Assets

The Borrower shall not, without first complying with the requirements of Section 8.1, extend or add to its System by purchasing, constructing, leasing or otherwise acquiring Capital Assets, including Capital Assets that constitute utility or non-utility plant, with funds from sources other than loans made or guaranteed by RUS in the case of:

(a) Generating facilities if the total expenditures for the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed the lesser of \$10 million or thirty percent (30%) of the Borrower's Equity; or

(b) Existing electric facilities or systems in service whose purchase price, or capitalized value in the case of a lease, exceeds ten percent (10%) of the Borrower's Net Utility Plant;

(c) Any new project to serve an end user whose annual kWh purchases or maximum annual kW demand is projected to exceed 25 percent of the Borrower's total kWh sales or maximum kW demand in the year immediately preceding the start of construction of facilities; provided, however, this Section 5.2(c) shall not preclude the Borrower from purchasing constructing, leasing or otherwise acquiring Capital Assets without complying with the requirements of Section 8.1 for a project intended to facilitate the providing of service to an end user in accordance with the provisions of a Smelter Contract, provided, further, however that the Borrower may not purchase, construct, lease or otherwise acquire Capital Assets pursuant to the preceding provision without first complying with the requirements of Section 8.1, if the estimated costs of any such project are estimated to exceed \$10,000,000.

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**Section 5.3. Attachment 4 for Response to AG 2-89
Disposition or Releases of Capital Assets**

The Borrower shall not, without first complying with the requirements of Section 8.1, voluntarily or involuntarily sell, convey, transfer, lease, as lessor, or otherwise dispose of any portion of its business or Capital Assets, or request the release of or release any Capital Assets from the lien of the Indenture or enter into contracts therefor in any calendar year except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 5.3, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." Notwithstanding the foregoing, the use by Borrower of the proceeds of any such sale, conveyance, transfer, lease or other disposition shall be in compliance with the Indenture.

Section 5.4. Limitations on Mergers and Sale, Lease or Transfer of Capital Assets

The Borrower shall not consolidate or merge with, or sell all or substantially all of its business or assets, except to the extent it is expressly permitted under the Indenture.

Section 5.5. Limitations on Employment and Retention of General Manager

At any time an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing, the Borrower shall not, without the prior written approval of the RUS, enter into an employment relationship with any person to serve as General Manager of the System. If an Event of Default, or an event which with the passage of time or the giving of notice, or both, would become an Event of Default, occurs and is continuing and the RUS requests the Borrower to terminate the employment of its General Manager, the Borrower shall do so within thirty (30) days after the date of such request. All contracts in respect of the employment of the General Manager or for the operation of the Utility System or the Electric System, hereafter entered into shall contain provisions to permit compliance with this Section 5.5.

Section 5.6. Limitations on Certain Types of Contracts

(a) *Approval of Certain Contracts.* The Borrower shall not, without first complying with the requirements of Section 8.1, enter into any of the following:

(i) Any contract for the management and operation of all or a material portion of its System;

(ii) Any contract for the purchase, exchange or sale of electric power or energy that has a term exceeding two (2) years;

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(iii) Any contract for the purchase or sale of interconnection, interchange wheeling, transmission, pooling, ancillary services pooling or similar power supply arrangements that has a term exceeding two (2) years;

(iv) Any contract for construction or procurement or for architectural and engineering services in connection with the Borrower's System if the project is financed or will be financed, in whole or in part, by a loan made or guaranteed by the RUS;

(v) Any amendment or modification to any of the Wholesale Power Contracts, including the Schedules thereto, including the Wholesale Power Contracts listed in the attached Exhibit D, except that the Borrower may amend or modify provisions specifying delivery points.

(b) *Terminations.* The Borrower shall not, without first complying with the requirements of Section 8.1, exercise any option to terminate any contract, including, without limitation, any Wholesale Power Contract, if such contract, based upon its nature, remaining term (not taking into account any option of the Borrower to terminate) and size, would be required to be approved by the RUS pursuant to paragraph (a) of this Section 5.6 if the Borrower were to have entered into such contract on the proposed termination date. The Borrower further agrees at the written direction of the RUS to exercise any option to terminate a contract if the exercise by the Borrower of that option would require compliance with the requirements of Section 8.1 pursuant to the immediately preceding sentence unless the exercise of such termination right could reasonably be expected to have a Material Adverse Effect.

(c) *Determination of Term.* For purposes of this Section 5.6, the term of any contract shall be determined in accordance with this Section 5.6(c). The term of any contract shall be the period during which performance (other than payment) is to occur and not the period commencing when such contract is executed. The term of any contract shall be based upon the period prior to the first date upon which the Borrower could, at its option, terminate the contract (taking into account any notice period required for termination).

(d) *Amendments; Extensions.* Any amendment or modification to an existing contract (including an extension thereof) shall be governed by this Section 5.6 only to the extent such specific amendment or modification (and not the contract as a whole), judged as if it were a separate contract, would be required to be approved by the RUS pursuant to paragraph (a) of this Section 5.6.

Section 5.7. Limitations on Loans, Investments and Other Obligations

The Borrower shall not, without first complying with the requirements of Section 8.1, make any loan or advance to, or make any Investment in, or purchase or make any commitment to purchase any stock, bonds, notes or other securities of, or guaranty, assume or otherwise become obligated or liable with respect to the obligations of, any other person, firm or corporation, except as permitted by the Act and RUS Regulations. In computing any permissible level of Investments in any person, firm or corporation in accordance with this Section 5.7 and

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the RUS Regulations, the Borrower's existing capital contribution to Big Rivers Leasing shall not be included as contributing to the level of aggregate permissible Investments.

Section 5.8. Rate Changes

The Borrower shall not, without first complying with the requirements of Section 8.1, increase or reduce its rates.

Section 5.9. Indenture Restrictions

Notwithstanding the provisions of the Indenture, the Borrower shall not, without first complying with the requirements of Section 8.1:

(a) consolidate or merge with any other corporation or convey or transfer the Trust Estate under the Indenture substantially as an entirety, or otherwise reorganize its corporate structure to transfer functions or any substantial part of the Trust Estate to any other Person;

(b) elect pursuant to Section 1.1D of the Indenture to apply Accounting Requirements in effect as of the date of execution and delivery of the Indenture;

(c) include as Property Additions, under any provision of the Indenture, any property that would not qualify as Property Additions but for paragraph C of the definition of Property Additions, or sell, lease or sublease any portion of the Trust Estate pursuant to paragraph H of Section 6.1 of the Indenture;

(d) submit an Available Margins Certificate under Article V of the Indenture for the purpose of issuing Additional Obligations unless such Certificate is accompanied by an Independent Accountant's Certificate stating in substance that nothing came to the attention of such Accountant in connection with its unaudited review of the applicable period that would lead such Accountant to believe that there was any incorrect or inaccurate statement in such Certificate;

(e) enter into a Supplemental Indenture pursuant to Section 13.1H of the Indenture;

(f) enter into a Supplemental Indenture pursuant to Section 13.1B or 13.1C of the Indenture if (i) the Holders of the Obligations issued under such Supplemental Indenture are granted greater security rights in and to the Trust Estate than those security rights enjoyed by the Government in its capacity as a Holder of Obligations under the Indenture, provided, however, that neither (I) the existence of Credit Enhancement nor (II) the creation and maintenance of debt service or similar funds for the payment of the principal and interest on Obligations issued under such Supplemental Indenture (to the extent such debt service or other similar funds are funded from the proceeds of the issuance of such Obligations or funded in connection with the refinancing of other debt by such Obligations), shall constitute greater security rights in and to the Trust Estate requiring the Borrower to comply with the requirements of Section 8.1; (ii) the

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Supplemental Indenture provides for covenants, restrictions, limitations, conditions, events of defaults or remedies not applicable to all Obligations then Outstanding or not equally available to all Holders of Obligations then Outstanding, provided, however, that provisions for covenants and events of default that relate solely to assuring that the interest on such Obligations (or other indebtedness secured by such Obligations) is excludable from the gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, shall not constitute the providing of covenants or events of default requiring the Borrower to comply with the requirements of Section 8.1; or (iii) the Obligations issued under such Supplemental Indenture, or the indebtedness secured by such Obligations, can be (a) accelerated or (b) effectively accelerated through a mandatory purchase or similar mechanism, in either case, as a consequence of a breach or default by the Borrower under the related loan agreement or similar agreement entered into in connection with such Obligation or indebtedness, provided, however, that acceleration and similar rights may be granted to development authorities and trustees without first complying with the requirements of Section 8.1 in connection with the issuance of Obligations (or other indebtedness secured by such Obligations) the interest on which is excludable from the gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such acceleration and similar rights are substantially similar to those currently granted to development authorities and trustees in connection with the Existing Obligations;

(g) create or incur or suffer or permit to be created or incurred or to exist any pledge of current assets secured under the Indenture to secure current liabilities;

(h) take any of the following actions:

(i) provide under the Indenture a Certificate of an Appraiser who is not Independent if the value of the property or securities to which such certificate applies is greater than \$500,000;

(ii) provide under the Indenture a Certificate of an Engineer who is not a licensed professional with respect to any project if the cost of such project is greater than \$50,000; or

(iii) provide under the Indenture a Certificate of an Engineer who is not Independent and a licensed professional with respect to the fair value or repair cost of any project if either (A) the fair value or repair cost of such project is greater than \$5,000,000 or (B) RUS has requested in writing such certificate to be provided by an Engineer who is Independent and a licensed professional;

(i) modify or alter Section 9.7 of the Indenture or the obligation of the Trustee under the Indenture to hold the Trust Estate for the equal and proportionate benefit and security of the Holders, without any priority of any Obligation over any other Obligation;

(j) certify pursuant to Section 5.3D(1) or 5.3D(2) of the Indenture any retired Obligation or any principal payment on an Obligation as the basis for taking any action under the Indenture, if such retirement or payment is pursuant to a regularly scheduled sinking fund or

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principal installment or made at the Stated Maturity of such Obligation; provided, however, that the Borrower shall not have to comply with the requirements of Section 8.1 before certifying pursuant to Section 5.3D(1) or 5.3D(2) of the Indenture in connection with the issuance of Additional Obligations under the Indenture if such Additional Obligations are:

(1) issued to refund Obligations the interest on which is exempt from taxation under Section 103 of the Internal Revenue Code, or obligations which were issued to refund such tax-exempt Obligations;

(2) issued to refund Obligations owed to, or guaranteed by, the United States of America acting through the RUS, or obligations which were issued to refund such Obligations owed to, or guaranteed by, the United States of America acting through the RUS; or

(3) Obligations issued to refund Obligations, if the combined term of the refunded Obligations and the refunding Additional Obligations does not exceed the term for which the refunded Obligations could have been originally issued under the provisions of this paragraph (j) or paragraph (k) of this Section 5.9.

(k) issue any Additional Obligations under the Indenture to finance Property Additions unless the following additional requirements are satisfied in addition to the requirements set forth in the Indenture for issuing such Additional Obligations:

(1) If the proceeds of such Additional Obligations are being used to finance the initial cost of the construction or acquisition of identified tangible assets, the weighted average life of the loan evidenced by such Additional Obligations does not exceed the weighted average of the expected remaining useful lives of the assets being financed;

(2) The principal of the loan evidenced by such Additional Obligations is amortized at a rate that shall yield a weighted average life that is not greater than the weighted average life that would result from level payments of principal and interest; and

(3) The principal of the loan being evidenced by such Additional Obligations has a maturity of not less than five years.

In determining its compliance with the requirements of clause (2) of this paragraph (k), the Borrower shall be permitted to make reasonable assumptions as to the interest rate which such Additional Obligations will bear as the Borrower deems appropriate in light of the prevailing interest rate environment in which such Additional Obligations are to be issued; or

(l) permit any liens in respect of judgments or awards which would be Permitted Exceptions pursuant to Paragraph F of the definition of "Permitted Exceptions" in the Indenture, by virtue of the fact that such liens are fully covered by insurance; or

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(m) enter into any leases to and permits for occupancy, which materially impair the Company's use of the property in the conduct of its business, by, other Persons which would be Permitted Exceptions pursuant to Paragraph K of the definition of "Permitted Exceptions" by virtue of the fact that any such leases and/or permits are for a period of less than ten (10) years.

Section 5.10. Negative Pledge

The Borrower shall not, without first complying with the requirements of Section 8.1, directly or indirectly create, incur, assume or permit to exist any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other agreement to give any security interest) on or with respect to any of the Excepted Property except for:

(a) Permitted Exceptions (other than the Permitted Exception described in paragraph Y of the definition of Permitted Exceptions);

(b) as to the Excepted Property described in paragraphs B through E of the Indenture, inclusive, and paragraph K of the definition of Excepted Property, liens, mortgages, pledges, security interests, charges and encumbrances in connection with purchase money, construction or acquisition indebtedness (or renewals or extensions thereof) that encumber only the asset or assets so purchased, constructed or acquired or property improved through such purchase, construction or acquisition, and the proceeds upon a sale, transfer or exchange thereof;

(c) liens, mortgages, pledges, security interests, charges and encumbrances (i) for the benefit of all Holders of the Obligations issued under the Indenture, (ii) in connection with any bond service or similar fund established by the Borrower with respect to any debt securities, the interest on which is excludable from gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, to the extent of amounts deposited in such funds in the ordinary course to make regularly scheduled payments on such debt securities, or (iii) in connection with any debt service or similar fund established by the Borrower for the payment of principal or interest on debt securities, the interest on which is excludable from gross income of the holder thereof pursuant to the Internal Revenue Code, as amended, if such fund is funded solely from the proceeds of the issuance of such debt securities (or funded in connection with the refinancing of other debt by such debt securities);

(d) liens, pledges, security interests, charges and encumbrances with respect to deposit, brokerage, commodity and other similar accounts to the extent such liens, pledges, security interests, charges and encumbrances do not secure indebtedness for borrowed money other than indebtedness incurred in connection with acquiring securities or other investments deposited in any such account; or

(e) liens, pledges, security interests, charges and encumbrances with respect to any interest, debt or equity, of the Borrower in National Rural Utilities Cooperative Finance

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Corporation or CoBank, ACB, purchased or otherwise acquired by the Borrower in connection with membership in such entity or any borrowing from such an entity.

Section 5.11. Emissions Allowances

Except for sales initiated by the Government without the prior consent and knowledge of the Borrower, the Borrower shall not, without first complying with the requirements of Section 8.1, sell, assign or otherwise dispose of (or enter into any agreement therefor) any allowances for emissions or similar rights granted by any governmental authority except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 5.11, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." The proceeds of any such sale, assignment or other disposition, shall be deposited in the Construction Fund Trustee Account. For such sales initiated by the Government without the prior consent and knowledge of the Borrower, the Borrower shall give RUS, promptly upon receipt thereof, written notice of such sales.

Section 5.12. Renewable Energy Credits

The Borrower shall not, without first complying with the requirements of Section 8.1, sell, assign or otherwise dispose of (or enter into any agreement therefor) (a) any credits received from allowances for emissions or (b) similar rights granted by any governmental authority, in either case which relate to renewable energy, except in compliance with all applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any applicable RUS Regulations, including without limitation, RUS Bulletin 1717M-2, and any successor regulation. For purposes of measuring the Borrower's compliance with the preceding sentence of this Section 5.12, Section 4(a)(1)(a) of RUS Bulletin 1717M-2 shall be deemed to be modified to read as follows: "The Borrower is not in default." The proceeds of any such sale, assignment or other disposition, shall be deposited in the Construction Fund Trustee Account.

Section 5.13. Fiscal Year

The Borrower shall not, without first complying with the requirements of Section 8.1, change its fiscal year.

Section 5.14. Limits on Variable Rate Indebtedness

During any period in which (a) an Event of Default has occurred and is continuing or (b) the Borrower has not maintained a Credit Rating of Investment Grade, the Borrower shall not, without first complying with the requirements of Section 8.1, increase the outstanding principal amount of indebtedness of the Borrower, the interest rate with respect to which is adjusted or readjusted at intervals of less than two (2) years, to an amount exceeding the amount thereof outstanding on the date of such notice from the RUS.

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Limits on Short-Term Indebtedness

Section 5.15.

The Borrower shall not, without first complying with the requirements of Section 8.1, on any date permit Short-Term Indebtedness to exceed fifteen percent (15%) of the Borrower's long-term debt and equities (determined in accordance with Accounting Requirements, except that such determination and calculations shall not be made on a consolidated basis and shall not, therefore, take into account the Short-Term Indebtedness, long-term debt and equities of the Borrower's Affiliates and Subsidiaries) as of the end of the fiscal quarter immediately preceding such date. As used in this Section 5.15, "Short-Term Indebtedness" means all indebtedness of, or guaranteed or in effect guaranteed (whether directly or indirectly, contingent or otherwise) against loss in respect thereof to the holder thereof by, the Borrower (other than trade payables) which on the date of original issuance thereof is classified as short-term debt under Accounting Requirements; provided, however, that any indebtedness issued in accordance with a credit agreement or other arrangement with a maturity or expiration date of greater than one year from the date of effectiveness of such credit agreement or arrangement shall not be considered Short-Term Indebtedness at such time as the maturity of expiration of such credit agreements or arrangements is less than one year.

Section 5.16. Limitations on Changing Principal Place of Business

Without prior written notification to the RUS, the Borrower shall not change its principal place of business.

Section 5.17. Limitations on RUS Financed Extensions and Additions

The Borrower shall not extend or add to its System either by construction or acquisition without the prior written approval of RUS if the construction or acquisition is financed or will be financed, in whole or in part, by a RUS loan or loan guarantee.

Section 5.18. Historic Preservation

Notwithstanding the provisions of Section 3.2, the Borrower shall not, without approval in writing by the RUS, use any advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 5.19. Change of Ratings Agency

At any time that only one Rating Agency has assigned a Credit Rating, the Borrower shall not, without first complying with the requirements of Section 8.1, change the Rating Agency then providing the Credit Rating.

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Section 5.20. Attachment 4 for Response to AG 2-89
Competitive Transition Charges

The Borrower shall not, without first complying with the requirements of Section 8.1, (i) sell, exchange or otherwise dispose of Competitive Transition Charges, (ii) request the release of Competitive Transition Charges from the lien of the Indenture, or (iii) utilize Competitive Transition Charges as a basis for issuing Obligations under the Indenture, or as basis for a securitized financing outside the Indenture, or withdraw Trust Moneys related to Competitive Transition Charges.

Section 5.21. Limitation on Release of Agreements

The Borrower shall not, without first complying with the requirements of Section 8.1, sell, assign or otherwise dispose of, request the release of or release any contract described in Section 5.6 or any Wholesale Power Contract from the lien of the Indenture.

Section 5.22. Construction Fund Trustee Account

The Borrower shall deposit the proceeds of loans made or guaranteed by RUS promptly after the receipt thereof in a bank or banks that are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS. Any account (hereinafter called "Construction Fund Trustee Account") in which any such moneys shall be deposited shall be insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be designated by the corporate name of the Borrower followed by the words "Construction Fund Trustee Account." Moneys in any Construction Fund Trustee Account shall be used solely for the construction and operation of the System and may be withdrawn only upon checks, drafts, or orders signed on behalf of the Borrower and countersigned by an executive officer thereof.

Section 5.23. Impairment of Contracts

The Borrower shall not (a) materially breach any obligation to be paid or performed by the Borrower under, or (b) take any action which is likely to materially impair the value of, any contract which is subject to the security interest created by the Indenture.

Section 5.24. Limitations on Distributions

Without the prior written approval of RUS, the Borrower shall not in any calendar year make any Distributions to its members or stockholders except as follows:

(a) *Equity above 30%*. If, after giving effect to any such Distribution, the Equity of the Borrower shall be greater than or equal to 30% of its Total Assets; or

(b) *Equity above 25%*. If, after giving effect to any such Distribution, the aggregate of all Distributions made during the calendar year when added to such Distribution shall be less than or equal to 25% of the margins for the year to which the Distribution relates.

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Provided however, that in no event shall the Borrower make any Distributions if there is unpaid when due any installment of principal of (premium, if any) or interest on its Notes, if an Event of Default has otherwise occurred and is continuing, or, if, after giving effect to any such Distribution, the Borrower's current and accrued assets would be less than its current and accrued liabilities and provided, further, that the limitation on Distributions created by this Section 5.24 shall not apply to any payments, rebates, refunds or abatement of power costs made in accordance with a Smelter Contract or made in accordance with any tariff on file with the Kentucky Public Service Commission.

Section 5.25. Limitations on Additional Indebtedness

The Borrower shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Indebtedness) other than the following ("Permitted Debt"):

- (a) Additional Obligations issued in compliance with Article V of the Indenture;
- (b) Purchase money indebtedness in non-System property, in an amount not exceeding 10% of Net Utility Plant;
- (c) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;
- (d) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;
- (e) Unsecured indebtedness for borrowed money, up to an aggregate amount of 15% of Net Utility Plant, so long as after giving effect to such unsecured indebtedness, the Borrower's Equity is more than 20% of its Total Assets;
- (f) Debt represented by dividends declared but not paid; and
- (g) Subordinated Indebtedness approved by RUS.

The Borrower may incur Permitted Debt without the consent of RUS only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder. By executing this Agreement any consent of RUS that the Borrower would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate federal laws or RUS Regulations.

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ARTICLE VI.

EVENTS OF DEFAULT

The following shall be "Events of Default" under this Agreement:

(a) *Representations and Warranties.* Any representation or warranty made by the Borrower in Article II hereof or, in any certificate furnished to the RUS hereunder or in the Loan Documents or in any filing pursuant to RUS Regulations shall be incorrect in any material respect at the time made and shall at the time in question be untrue or incorrect in any material respect and remain uncured;

(b) *Payment.* Default shall be made in the payment of or on account of interest on or principal of any RUS Note when and as the same shall be due and payable, whether by acceleration or otherwise, which shall remain unsatisfied for five (5) Business Days;

(c) *Other Covenants.* Default by the Borrower in the observance or performance of any other covenant or agreement contained in any of the Loan Documents, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Borrower by the RUS;

(d) *Corporate Existence.* The Borrower shall forfeit or otherwise be deprived of its corporate charter or any franchise, permit, easement, consent or license required to carry on any material portion of its business;

(e) *Other Obligations.* Default by the Borrower in the payment of any obligation, whether direct or contingent, for borrowed money in excess of \$1 million or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;

(f) *Bankruptcy.* A court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official, or ordering the winding up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days or the Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors; and

(g) *Dissolution or Liquidation.* Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Borrower, or failure by the Borrower promptly to forestall or remove any execution, garnishment or attachment of such consequence as shall

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impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days. The term "dissolution or liquidation of the Borrower," as used in this paragraph (g), shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another corporation following a transfer of all or substantially all its assets as an entirety, under the conditions permitting such actions.

(h) *Indenture.* Any Event of Default as set forth in Section 9.1 of the Indenture and any event (as set forth in such Section 9.1) that with the giving of notice or the passage of time, or both, could become an Event of Default.

ARTICLE VII.

REMEDIES

Upon the occurrence of an Event of Default, then RUS may pursue all rights and remedies available to RUS that are contemplated by this Agreement in the manner, upon the conditions, and with the effect provided in this Agreement, including, but not limited to, a suit for specific performance, injunctive relief or compensatory damages. The RUS is hereby authorized, to the maximum extent permitted by applicable law, to demand specific performance of this Agreement at any time when the Borrower shall have failed to comply with any provision of this Agreement applicable to it. The Borrower hereby irrevocably waives, to the maximum extent permitted by applicable law, any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance. Nothing herein shall limit the right of the RUS to pursue all rights and remedies available to a creditor at law or in equity following the occurrence of an Event of Default listed in Article VI hereof, or any right or remedy available to the RUS as a Holder of an Obligation under the Indenture. Each right, power and remedy of the RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.

ARTICLE VIII.

MISCELLANEOUS

Section 8.1. Notice to RUS; Objection of RUS

Before undertaking any transaction described in Article V or the schedules attached hereto that requires compliance with the requirements of Section 8.1, the Borrower shall give to the RUS (i) notice in writing describing in reasonable detail the proposed transaction and clearly stating that the transaction is covered by this Section 8.1 and (ii) drafts of any documents to effect such transaction. If the RUS delivers to the Borrower written notice that it objects to the

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proposed transaction within sixty (60) days (or such shorter period as the parties shall agree to in writing), the Borrower shall not complete the transaction without RUS approval.

Section 8.2. Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Address for Notices of the respective parties are as follows:

The Government:

Rural Utilities Service
United States Department of Agriculture
Room No. 5135-S
1400 Independence Avenue, S.W.
Stop 1510
Washington, DC 20250
Fax: (202) 720-9542
Attention: RUS Administrator

With a copy to:

Rural Utilities Service
United States Department of Agriculture
Room No. 0270-S
1400 Independence Avenue, S.W.
Stop: 1568
Washington, DC 20250
Fax: (202) 720-1401
Attention: Power Supply Division

The Borrower:

Big Rivers Electric Corporation
201 Third Street
Henderson, Kentucky 42420
Fax: (270) 827-2558
Attention: President and Chief Executive Officer

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With a copy to:

Sullivan, Mountjoy, Stainback & Miller
100 St. Ann's Building
PO Box 727
Owensboro KY 42302-0727

Fax: (270) 683-6694
Attention: James Miller

Section 8.3. Expenses

To the extent permitted by Law, the Borrower shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Loan Documents or with the preparation for such enforcement if the RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 8.4. Late Payments

If payment of any amount due hereunder is not received at the United States Treasury in Washington, D.C., or such other location as RUS may designate to the Borrower, within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount," and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period), the Borrower shall pay to RUS, in addition to all other amounts due under the terms of the RUS Notes and this Agreement, any late-payment charge as may be fixed by RUS Regulations from time to time on the delinquent amount for the late-payment period.

Section 8.5. Filing Fees

To the extent permitted by Law, the Borrower agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. The Borrower agrees to save harmless and indemnify the RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by the RUS in connection with this Agreement. The provisions of this Section 8.5 shall survive the execution and delivery of this Agreement and the payment of all other amounts due hereunder or due on the RUS Notes.

**Section 8.6. Attachment 4 for Response to AG 2-89
No Waiver**

No failure on the part of the RUS to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 8.7. Governing Law

EXCEPT TO THE EXTENT GOVERNED BY APPLICABLE FEDERAL LAW, THE LOAN DOCUMENTS SHALL BE DEEMED TO BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF KENTUCKY.

Section 8.8. Holiday Payments

If any payment to be made by the Borrower hereunder shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

Section 8.9. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Borrower and the RUS and their respective successors and assigns, provided, however, that the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the RUS.

Section 8.10. Complete Agreement; Amendments

This Agreement and the other Loan Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Loan Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Borrower herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 8.11. Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 8.12. Severability

If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such

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term, provision or condition nor any other term, provision or condition, and this Agreement and the RUS Notes shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained herein.

Section 8.13. Right of Set off

Upon the occurrence and during the continuance of any Event of Default, the RUS is hereby authorized at any time and from time to time, without prior notice to the Borrower, to exercise rights of set off or recoupment and apply any and all amounts held or hereafter held, by the RUS or owed to the Borrower or for the credit or account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing hereunder or under the RUS Notes. The RUS agrees to notify the Borrower promptly after any such set off or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such set off, recoupment or application. The rights of the RUS under this Section 8.13 are in addition to any other rights and remedies (including other rights of set off or recoupment) which the RUS may have. The Borrower waives all rights of set off, deduction, recoupment or counterclaim.

Section 8.14. Schedules and Exhibits

Each Schedule and Exhibit attached hereto and referred to herein is each an integral part of this Agreement.

Section 8.15. Sole Benefit

The rights and benefits set forth in this Agreement are for the sole benefit of the parties thereto and may be relied upon only by them.

Section 8.16. Prior Loan Contracts

It is understood and agreed that with respect to all loan agreements previously entered into by and between RUS and the Borrower, including, without limitation, the Existing Loan Contract, (hereinafter being referred to as "Prior Loan Contracts") the Borrower shall be required, as of the date hereof, to meet affirmative and negative covenants as set forth in this Agreement rather than those set forth in any Prior Loan Contract. As of the date hereof, this Agreement replaces and supersedes any Prior Loan Contract. In the event of any conflict between any provision set forth in the Prior Loan Contract and any provision in this Agreement, the requirements as set forth in this Agreement shall apply.

Section 8.17. Authority of RUS Representatives

In the case of any consent, approval or waiver from the RUS that is required under this Agreement or any other Loan Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this Section 8.17, "authorized RUS representative" means the Administrator of RUS, and also means a person to

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whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 8.18. Relation to RUS Regulations

(a) In case of any conflict between the terms of this Agreement and the provisions of the RUS Regulations, the terms of this Agreement shall control.

(b) The RUS Regulations shall apply to the Borrower to the extent and under the conditions expressly set forth in this Agreement (other than in Section 4.11). To the extent this the terms of this Agreement, the Indenture, and the RUS Regulations are silent on an issue relating to System operation, control, maintenance, and accounting, the Borrower will comply with Prudent Utility Practice.

(c) The Borrower recognizes that some RUS Regulations implement Federal statutes or regulatory policies that are not limited to rural electrification but apply to many types of Federal assistance. Nothing herein is intended to, or shall be deemed to, waive the requirements of any Federal statute or regulation that is applicable to the Borrower independently of any requirement made applicable solely by the RUS Regulations.

(d) Subject to paragraphs (b) and (c) above, if on the date of this Agreement, any RUS Regulation conflicts with the terms of this Agreement or the Indenture pursuant to 7 C.F.R. 1710.113(c)(2) (62 F.R. 7721 & 18037 (1997)), the RUS hereby waives compliance by the Borrower with such RUS Regulations.

Section 8.19. Term

This Agreement shall remain in effect until one of the following two events has occurred:

(a) The Borrower and the RUS replace this Agreement with another written agreement; or

(b) All of the Borrower's obligations under this Agreement and the RUS Notes have been discharged and paid.

Section 8.20. Relation to Indenture

The RUS is a party to this Agreement and a Holder of Outstanding Secured Obligations under the Indenture. Both this Agreement and the Indenture govern the relationship between the Borrower and the RUS, and the parties intend that the Indenture and this Agreement independently govern such relationship. Each provision of this Agreement is intended to and shall be fully operative and enforceable as written whether or not the subject matter of any such provision is or is not addressed by the Indenture, or, if so addressed, is addressed in a different way from that set forth in this Agreement.

**' Big Rivers Electric Corporation
Case No. 2013-00199**

Attachment 4 for Response to AG 2-89
(Signatures begin on next page.)

**Big Rivers Electric Corporation
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BIG RIVERS ELECTRIC CORPORATION

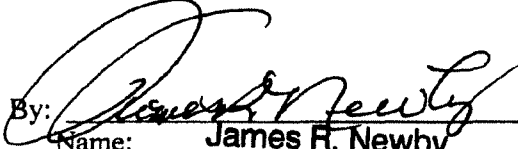
By: Mark A. Bailey
Name: Mark A. Bailey
Title: President and CEO

[Amended and Consolidated Loan Contract (RUS)]

**Case No. 2013-00199
Attachment 4 for Response to AG 2-89
Witness: Billie J. Richert**

Big Rivers Electric Corporation
Case No. 2013-00199

Attachment 4 for Response to AG 2-89
THE UNITED STATES OF AMERICA

By: 
Name: James R. Newby
Title: Acting Administrator

[Amended and Consolidated Loan Contract (RUS)]

Case No. 2013-00199
Attachment 4 for Response to AG 2-89
Witness: Billie J. Richert

Big Rivers Electric Corporation
Case No. 2013-00199

Attachment 4 for Response to AG 2-89
EXHIBIT A

To the Amended and Consolidated Loan Contract, dated as of July 1, 2009
between Big Rivers Electric Corporation, Old National Bank,
U.S. Bank National Association, and the United States of America

LOCKBOX AGREEMENT

This **LOCKBOX AGREEMENT** (this "Agreement") is entered into as of [], 2009, by and among Big Rivers Electric Corporation, Old National Bank, as Lockbox Bank (the "Bank"), U.S. Bank National Association, not individually or personally but solely in its capacity as trustee (the "Trustee") under the Indenture (defined below) and the United States of America, acting by and through the Administrator of the Rural Utilities Service (together with any agency succeeding to the powers and rights of the Rural Utilities Service, the "RUS").

WHEREAS, the Company, as grantor, and the Trustee have entered into an Indenture, dated as of July 1, 2009 (such indenture, as from time to time amended, supplemented or restated, the "Indenture"), whereby, among other things, the Company has granted a security interest in certain contracts of the Company for the purchase or sale of, and transmission of, electric power and energy by or on behalf of the Company;

WHEREAS, the Company has entered into wholesale power contracts (the "Wholesale Power Contracts") as listed on Exhibit D to the Loan Contract (as hereinafter defined);

WHEREAS, under the Indenture, the Company has also granted a security interest in the proceeds of the "Trust Estate" (as defined in the Indenture), including all proceeds of the Wholesale Power Contract;

WHEREAS, the Company and the RUS, have entered into an Amended and Consolidated Loan Contract, dated as of July 1, 2009 (such loan contract, as from time to time amended, supplemented or restated, the "Loan Contract") in which the Company has agreed, upon the occurrence of certain conditions and at the request of the RUS, to deposit cash proceeds of the Trust Estate as provided in the Indenture, the Loan Contract and this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. Definitions. Terms used in this Agreement with initial letters capitalized that are defined in the Indenture and are not otherwise defined herein have the meanings assigned to them in the Indenture. In addition, the following terms have the meanings assigned to them below:

(a) "Applicable Period" shall mean any period commencing on the date the Company receives notice from the RUS in writing pursuant to Section 4.12 of the Loan Contract, and ending on the date the Company receives notice from the RUS in writing that such period no longer exists; and

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(b) "Pledged Revenues" shall mean all cash proceeds (as defined in the Uniform Commercial Code) of the Trust Estate received or receivable by the Company in which the Indenture creates a security interest pursuant to the Uniform Commercial Code that are not deposited or required to be deposited with the Trustee pursuant to the Indenture; provided, however, to ease administrative burdens of the Company, Pledged Revenues shall not include cash proceeds (other than cash proceeds from the Wholesale Power Contracts) in an amount equal to or less than \$10,000 from any Person during any one month period.

Section 2. Lockbox Account. There is hereby created and established with the Bank a special account to be titled the "Big Rivers Electric Corporation Special Cash Account" (the "Lockbox Account"), account number []. The money deposited into the Lockbox Account, together with all investments thereof and investment income therefrom, shall be applied solely as provided in this Agreement.

Section 3. Account Subject to Pledge of the Indenture. Amounts deposited into the Lockbox Account shall constitute a portion of the Trust Estate pledged pursuant to the Indenture for the equal and ratable security of all the Outstanding Secured Obligations in accordance with and as provided by the terms of the Outstanding Secured Obligations and the Indenture. The Bank shall hold all such amounts deposited in the Lockbox Account pursuant to this Agreement as agent of the Trustee to perfect the lien of the Indenture therein. Except as otherwise permitted under Section 12, the Lockbox Account shall not be closed without the written consent of the RUS.

Section 4. Partial Waiver of Right of Set Off. Except to the extent of any amounts due to the Bank on account of items credited to the Lockbox Account prior to collection that are not subsequently collected, the Bank hereby waives, and agrees that it shall not exercise, any right of set off or any banker's lien with respect to the Lockbox Account; provided, however, that nothing in this Agreement shall be deemed to constitute a waiver by the Bank of its right of set off or any banker's lien with respect to any other account of the Company.

Section 5. Payments to Be Made to Account. During any Applicable Period, the Company shall direct each of its members and each other Person obligated to make any payment to the Company of Pledged Revenues to make such payments to the Bank at the address or in such other manner as specified in Section 6 for deposit into the Lockbox Account. The Company agrees not to make, cause or permit to be made any deposits of moneys other than Pledged Revenues into the Lockbox Account. The Company shall use its best efforts to cause its members and each other Person obligated to make any payment of Pledged Revenues to make such payments in accordance with the provisions of this Agreement.

Section 6. Manner of Payment

(a) During any Applicable Period, payments of Pledged Revenues made by mail shall be mailed to:

[]

Reference: Big Rivers Electric Corporation Special Cash Account

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or to such other address as may be specified by the Bank to the Company at least thirty (30) days before the effective date of such change. During any Applicable Period, electronic payments of Pledged Revenues shall be made in the following manner:

[]

All such payments of Pledged Revenues shall be accompanied by such references or other instructions to the Bank to deposit such payments in the Lockbox Account. The Bank shall have no responsibility or liability for failing to deposit any moneys in the Lockbox Account which are not accompanied by such references or other instructions to deposit such moneys in such account.

(b) All such payments received by the Bank shall be deposited into the Lockbox Account and held subject to the provisions hereof. The Bank is hereby authorized, empowered and directed by the Company to deposit all funds received as described in Section 6(a) into the Lockbox Account and to make all necessary endorsements and to take all other necessary actions to carry out the purposes of this Agreement. The Company hereby waives notice of presentment, protest and non-payment of any instrument so endorsed.

(c) During any Applicable Period, the Company shall promptly, and no event later than the Business Day following the receipt thereof, remit to the Bank in accordance with Section 6(a) for deposit into the Lockbox Account any Pledged Revenue that is received by the Company.

Section 7. Accounting. No less frequently than once each month, the Bank shall deliver by mail a statement to the Company, with copies to the Trustee, the RUS and such other Persons as may be designated by the Company, which shall identify the date, maker and amount of each deposit to the Lockbox Account, and the date, payee and amount of each withdrawal or other debit to the Lockbox Account.

Section 8. Disbursements.

(a) Upon written demand of the Trustee, accompanied by a statement that there has occurred and is continuing under the Indenture an Event of Default, and continuing until such demand is rescinded, the Bank shall pay to the Trustee all amounts then or thereafter on deposit in the Lockbox Account, to be applied by the Trustee as provided under the Indenture. Such amounts so paid shall be held and administered by the Trustee in accordance with general terms and conditions set forth in the Indenture.

(b) So long as the Bank shall not have received a written demand from the Trustee under paragraph (a) above, on the fifth (5th) Business Day preceding the end of each month during the Applicable Period, the Bank shall withdraw and pay (or deposit in another, unrestricted account, at the direction of the appropriate party listed below) from the amounts on deposit in the Lockbox Account the following amounts in the order indicated to the extent funds are available in the Lockbox Account:

(1) to the Bank, the amount of fees and expenses that are then payable to the Bank under Section 9;

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(2) to the Trustee, the amount certified by the Trustee as the amount of any fees or expenses that are then payable to the Trustee under the Indenture;

(3) to the Company, the amount specified in a written request as the amount of ordinary and necessary payments due from the Company for the following month, including, without limitations, payments for operations and regularly scheduled debt service;

(4) to the Trustee, the amount certified by the Company as the amount necessary to provide for the payment of the principal and interest then due or (based on receipt by the Trustee on a monthly basis of a proportional amount of principal and accrued interest) becoming due on the Outstanding Secured Obligations during the following month, for deposit as Trust Moneys under the Indenture;

(5) to the Company, the amount specified in a written request as the amount of expenditures approved for the following month in accordance with a capital expenditure budget approved by the RUS;

(6) to the Company, the amount specified in a written request as the amount of expenditures for the following month approved in writing by the RUS for other purposes; and

(7) to the payment of any amounts due under Obligations to maintain the value of reserve funds established and maintained in connection with debt securities (A) secured by a pledge of certain Obligations, (B) issued on behalf of the Company and (C) with respect to which an opinion was delivered on the date of the issuance of such securities to the effect that the interest on such securities is excluded from the gross income of the holder of such securities pursuant to the Internal Revenue Code, as amended.

(c) Any amounts remaining on deposit in the Lockbox Account on the day following the end of the month in which (i) an Applicable Period no longer exists (as evidenced by an Officers' Certificate and a notice from the RUS to such effect) or (ii) this Agreement terminates pursuant to Section 13, shall be paid to the Company in accordance with, and upon receipt of, a written request, to be used for any lawful purpose.

(d) Pending disbursements of the amounts on deposit in the Lockbox Account, the Bank shall promptly invest and reinvest such amounts in the Defeasance Securities specified in any Company Order or in a mutual fund consisting of Defeasance Securities, or in such other investments as may be approved in writing by the RUS.

(e) Any amounts deposited in the Lockbox Account that do not constitute Pledged Revenues, as identified to the Bank in writing by either of the RUS or the Trustee, shall be promptly paid to the Company (provided that during any period described in paragraph (a) above, in which case such amounts so identified shall be paid to the Trustee). The Company

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agrees to promptly notify both of the Trustee and the RUS of any deposits into the Lockbox Account of any amounts not constituting Pledged Revenues.

(f) The RUS agrees that, so long as an Applicable Period exists, it shall promptly respond to any request made by the Company for expenditures pursuant to this Section. If the RUS has not responded within five (5) days (during which the offices of the RUS are open) of the receipt by the RUS of a written request for expenditures, such request will be deemed to have been approved by the RUS. In disbursing any such amounts that are subject to RUS approval, the Bank shall be able to conclusively rely on the Company's statement in writing that the RUS has approved such expenditure in writing or has been deemed to have approved such expenditure.

Section 9. Fees and Expenses of Bank. The Company agrees

(a) to pay to the Bank from time to time such compensation as may be specifically agreed upon with the Bank and, absent specific agreement, reasonable compensation for 0 services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any provision of this Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Bank's negligence or bad faith; and

(c) to indemnify the Bank for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

All such payments and reimbursements shall be made with interest at the then prevailing prime rate of the Bank.

Section 10. Certain Rights of Bank.

(a) The Bank undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and no implied covenants or obligations shall be read into this Agreement against the Bank. The Bank makes no representation or warranty as to the priority of any claim or the status, in the event of any insolvency, bankruptcy or other similar proceeding affecting the Company, of amounts held in the Lockbox Account or paid therefrom.

(b) In the absence of bad faith on its part, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Bank and appearing to conform to the requirements of this Agreement. The Bank shall have no liability for actions taken pursuant to this Agreement other than as a result of its gross negligence or willful misconduct.

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(c) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and shall not be required to verify the accuracy of any information or calculations required to be included therein or attached thereto. Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a written request and any resolution of the Board of Trustees may be sufficiently evidenced by a Board Resolution.

(d) Whenever in the administration of this Agreement, the Bank shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Bank (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate.

(e) The Bank may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and shall not be liable for the negligence or misconduct of such Persons appointed by the Bank with due care hereunder.

(g) The Bank shall not be liable for any errors of judgment made in good faith by it, unless it shall be proved that the Bank was grossly negligent or reckless in ascertaining the pertinent facts.

(h) The Bank shall not be required to give any bond or surety in respect of the execution of the obligations and trusts set forth in this Agreement or otherwise in respect hereof or of the Lockbox Account.

Section 11. Trustee's Rights, Obligations, Etc. The rights, duties, responsibilities and fees of the Trustee hereunder shall be governed by the provisions of Article IX of the Indenture relating to the Trustee and the indemnities provided for in the Indenture shall include all action by the Trustee taken hereunder.

Section 12. Removal, Resignation, Etc. The Bank may resign at any time upon thirty (30) days written notice to the Company, the Trustee and the RUS. The Company may remove the Bank, with the written consent of the RUS, upon thirty (30) days written notice to the Bank, the Trustee and the RUS. The RUS may remove the Bank upon thirty (30) days written notice to the Bank, the Company and the Trustee. Upon any such resignation or removal, the Company shall select another financial institution, with the approval of the RUS, with which to enter into a lockbox agreement substantially upon the terms contained in this Agreement and otherwise upon such terms as shall be permitted or required by the RUS. In the event the Company does not select a financial institution approved by the RUS, the RUS shall select such financial institution.

Big Rivers Electric Corporation
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Attachment 4 for Response to AG 2-89

Section 13. Amendments with Consent of the RUS. Even though this Agreement establishes rights for the benefit of Holders of the Outstanding Secured Obligations, the terms, conditions and requirements of this Agreement are in addition to those found in the Indenture and have been required solely by the RUS. Accordingly, this Agreement can be terminated, amended, modified or supplemented in any way by the Company with the consent of only the RUS and without the consent of the Bank, the Trustee or the Holders of the Outstanding Secured Obligations; provided however that no amendment, modification or supplement to the obligations or rights of the Bank or the Trustee, or otherwise adversely affecting the Bank or the Trustee, shall be effective as to the Bank or the Trustee without the prior written consent of the Bank or the Trustee, or both, as the case may be. This Agreement shall automatically terminate on the date on which the RUS is no longer a Holder of any Outstanding Secured Obligation.

Section 14. Exculpation of the RUS. The RUS shall have no obligation or liability to any party to this Agreement.

Section 15. Benefits of Agreement. Nothing in this Agreement, express or implied, shall give to any Person, other than the parties hereto, and their successors hereunder and any separate trustee or co-trustee appointed under Section 9.14 of the Indenture, any benefit or any legal or equitable right, remedy or claim under this Agreement.

Section 16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Section 17. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 18. Specific Performance. Each of the Trustee and the RUS is hereby, to the maximum extent permitted by applicable law, to demand specific performance of this Agreement at any time when the Company shall have failed to comply with any provision of this Agreement applicable to it. The Company hereby irrevocably waives, to the maximum extent permitted by applicable law, any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

Section 19. Waiver. No failure on the part of the Trustee, the Bank or the RUS to exercise, and no delay in exercising, any right hereunder, under the Indenture or under the Loan Contract, shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder or thereunder preclude any other or further exercise thereof. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 20. Further Assurances. The Company agrees, at the cost and expense of the Company, to execute and deliver and file and record such further documents or instruments as the Trustee, the RUS or the Bank may reasonably request in order to carry out or confirm the respective rights of the Trustee, the RUS and the Bank under this Agreement.

Section 21. Entire Agreement. This written Agreement represents the final agreement between the parties and may not be contradicted by evidence of prior,

**Big Rivers Electric Corporation
Case No. 2013-00199**

Attachment 4 for Response to AG 2-89
contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between parties.

[Signatures on next page.]

**Big Rivers Electric Corporation
Case No. 2013-00199**

Attachment 4 for Response to AG 2-89

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

OLD NATIONAL BANK
as Lockbox Bank

By: _____
Name: _____
Title: _____

BIG RIVERS ELECTRIC CORPORATION

By: _____
Name: _____
Title: _____

U.S. BANK NATIONAL ASSOCIATION
as Trustee under the Indenture identified herein

By: _____
Name: _____
Title: _____

THE UNITED STATES OF AMERICA

By: _____
Name: _____
Title: _____

**Big Rivers Electric Corporation
Case No. 2013-00199**

**Attachment 4 for Response to AG 2-89
EXHIBIT B**

**To the Amended and Consolidated Loan Contract dated as of July 1, 2009
between Big Rivers Electric Corporation and United States of America**

Equal Opportunity Contract Provisions

During the performance of this contract, the Borrower agrees as follows:

(a) The Borrower shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Borrower shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Borrower shall, in all solicitations or advertisements for employees placed by or on behalf of the Borrower, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Borrower shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Borrower's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Borrower shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Borrower shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Borrower's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

**Big Rivers Electric Corporation
Case No. 2013-00199**

Attachment 4 for Response to AG 2-89

(g) The Borrower shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 12246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Borrower shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Big Rivers Electric Corporation
Case No. 2013-00199**

**Attachment 4 for Response to AG 2-89
EXHIBIT C**

**To the Amended and Consolidated Loan Contract dated as of July 1, 2009
between Big Rivers Electric Corporation and United States of America**

Description of Rating Agency Services

- (a) Comprehensive credit evaluation and assignment of an initial long term credit rating;
- (b) Ongoing surveillance of Big Rivers Electric Corporation's ("BR's") rating, including an annual meeting with senior ratings agency analysts, and a full credit report published annually;
- (c) Annual presentation by senior ratings agency analysts on BR's credit rating to BR's Board of Directors, if so requested;
- (d) Annual presentation by senior ratings agency analysts on BR's credit rating to the RUS, if so requested by the RUS; and
- (e) Furnish to the RUS copies of any written reports given to BR.

**Big Rivers Electric Corporation
Case No. 2013-00199**

**Attachment 4 for Response to AG 2-89
EXHIBIT D**

Wholesale Power Contracts

1. Wholesale Power Contract made as of October 14, 1977, between the Borrower and Jackson Purchase Rural Electric Cooperative Corporation, as amended.
2. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Meade County Rural Electric Cooperative Corporation, as amended.
3. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Kenergy Corp. (successor by consolidation to Henderson Union Rural Electric Cooperative Corporation), as amended.
4. Wholesale Power Contract made as of June 11, 1962 between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation), as amended.
5. Agreement dated October 12, 1974 by and between the Borrower and Kenergy Corp. (successor by consolidation to Henderson-Union Electric Corporation), as amended.
6. Agreement dated October 12, 1974 by and between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation) as amended and restated by an Agreement dated February 16, 1988, as amended.
7. Agreement dated as of July 15, 1998 between the Borrower and Kenergy Corp. (successor by consolidation to Green River Electric Corporation and Henderson-Union Electric Cooperative Corp.), as amended.
8. Wholesale Electric Service Agreement (Alcan) dated July 16, 2009 by and between the Company and Kenergy Corp.
9. Wholesale Electric Service Agreement (Century) dated as of July 16, 2009 by and between the Company and Kenergy Corp.

Electronic
Attachment(s)
Produced
Separately

BIG RIVERS ELECTRIC CORPORATION

**APPLICATION OF BIG RIVERS ELECTRIC CORPORATION
FOR A GENERAL ADJUSTMENT IN RATES
CASE NO. 2013-00199**

**Response to the Office of the Attorney General's
Second Request for Information
dated September 16, 2013**

September 30, 2013

1 **Item 90)** *Reference the company's response to AG 1-260. The company provided*
2 *multiple objections in the main body of its response, and provided a partially substantive*
3 *response to subpart (a). However, with regard to all remaining subparts, (b) through (l),*
4 *the company responded only, "see objection and subpart (a), above." Specify which*
5 *objection(s) apply to each particular subpart, including the nature of any applicable*
6 *privilege that the company believes attaches to each individual subpart.*

7
8 **Response)** Big Rivers objects to this request as argumentative insofar as it
9 mischaracterizes Big Rivers' response to AG 1-260 as "partially substantive" and implies
10 that the nature of "attorney-client and attorney work product privileges" is not self-evident.
11 Big Rivers further objects that this request is not reasonably calculated to lead to the
12 discovery of admissible evidence. Notwithstanding these objections, and without waiving
13 them, Big Rivers responds that its objections and privilege assertions applied to the response
14 as a whole, which includes all of the subparts. Responsive information that was not
15 objectionable and/or privileged for the reasons stated therein was identified in response to
16 part a, which was referenced in all other parts of the request.

17
18 **Witness)** Counsel